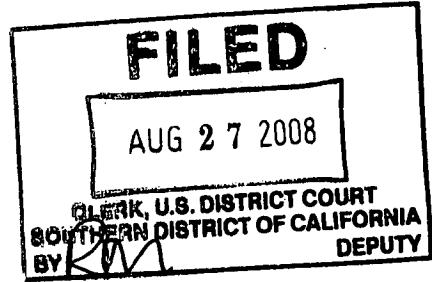


1 Mark Titch  
2 B-89549, F1-04-227  
3 P.O. Box 799001  
4 San Diego, Ca 92179-9001

5 Petitioner, Pro Se



6 UNITED STATES DISTRICT COURT

7 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

8  
9  
10 MARK TITCH,  
11 Petitioner, Pro Se  
12 )  
13 )  
14 )  
15 )  
16 )  
17 )  
18 )  
19 )  
20 )  
21 )  
22 )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )

Case No. 08-CV-0654 J (WMC)

vs.  
)

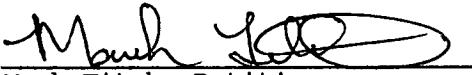
ROBERT J. HERNANDEZ,  
Warden, RJDCF, et.al.  
)

LODGEMENT OF DOCUMENTS IN SUPPORT OF  
PETITIONER'S TRAVERSE

17 Petitioner, Mark Titch, hereby lodges with this court Exhibits A thru E.  
18 These documents are necessary to support the claims petitioner has made in  
19 his traverse and comply with federal and local rules of court.

21 Dated: 8/25/08

Respectfully Submitted,

  
22  
23 Mark Titch, Petitioner

## TABLE OF EXHIBITS

		<u>Page(s)</u>
3	EXHIBIT A: Santa Clara Superior Court Case <u>In re Criscione</u>	1-34
4	EXHIBIT B: Petitioner's Positive Accomplishments (2006-2008)	1-14
5	EXHIBIT C: Petitioner's 2008 Psychological Evaluation	1-10
6	EXHIBIT D: BPH Parole Consideration Worksheet & Hearing Decision Face Sheet	1-2
7		
8	EXHIBIT E: Los Angeles Times News Article	1-2
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

**DECLARATION OF RECORDS**

3 I Mark Titch, do hereby declare the following:

4 The attached documents are true and correct copies of the original  
5 documents. Where the documents were given to petitioner by another  
6 person, petitioner believe them to be true and correct copies.

10  
11 I declare under penalty of perjury that the foregoing is true and  
12 correct and that this declaration was executed on 8/25/08  
13 at San Diego, California.

/s/  

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**EXHIBIT A**

Santa Clara Superior Court Case In re Criscione

(ENDORSED)

FILED

AUG 30 2007

KIRI TORRE

Chief Executive Officer/Clerk

Superior Court of California, Santa Clara

BRET MORROW DEPUTY

CLERK

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA CLARAIn re ) No.: 71614  
ARTHUR CRISCIONE, ) ORDER  
On Habeas Corpus )INTRODUCTION

Petitioner alleges that he has been denied due process of law because the Board has used standards and criteria which are unconstitutionally vague in order to find him unsuitable for parole. Alternatively, he argues that those standards, even if constitutionally sound, are nonetheless being applied in an arbitrary and meaningless fashion by the Board. He relies upon evidence that in one hundred percent of 2690 randomly chosen cases, the Board found the commitment offense to be "especially heinous, atrocious or cruel", a factor tending to show unsuitability under Title 15 §2402(c)(1).

Are the Board Criteria Unconstitutionally Vague?

Our courts have long recognized that both state and federal due process requirements dictate that the Board must apply detailed standards when evaluating whether an individual inmate is unsuitable for parole on public safety grounds. (See *In re Dannenberg* (2005) 34

28

1 Cal.4th 1061 at p. 1056, footnote 16.). Those standards are found in  
2 15 CCR §2402(c) (Dannenberg, *supra*, 34 Cal.4th at p. 1080,) and do  
3 include detailed criteria to be applied by the Board when considering  
4 the commitment offense:

5 (c) Circumstances Tending to Show Unsuitability. The following  
6 circumstances each tend to indicate unsuitability for release.  
7 These circumstances are set forth as general guidelines; the  
8 importance attached to any circumstance or combination of  
circumstances in a particular case is left to the judgment of  
the panel. Circumstances tending to indicate unsuitability  
include:

9 (1) Commitment Offense. The prisoner committed the offense in an  
especially heinous, atrocious or cruel manner. The factors to be  
10 considered include:

11 (A) Multiple victims were attacked, injured or killed in  
the same or separate incidents.

12 (B) The offense was carried out in a dispassionate and  
calculated manner, such as an execution-style murder.

13 (C) The victim was abused, defiled or mutilated during or  
after the offense.

14 (D) The offense was carried out in a manner which  
demonstrates an exceptionally callous disregard for human  
suffering.

15 (E) The motive for the crime is inexplicable or very  
trivial in relation to the offense.

16 In response to Petitioners claim that the regulations are  
17 impermissibly vague, Respondent argues that while "especially  
18 heinous, atrocious or cruel" might be vague in the abstract it is  
19 limited by factors (A)-(E) of §2402(c)(1), and thus provides a  
20 'principled basis' for distinguishing between those cases which are  
21 contemplated in that section and those which are not. An examination  
22 of cases involving vagueness challenges to death penalty statutes is  
23 instructive here and shows that Respondent's position has merit:  
24 "Our precedents make clear that a State's capital sentencing  
25

1 scheme also must genuinely narrow the class of persons eligible  
2 for the death penalty. When the purpose of a statutory  
3 aggravating circumstance is to enable the sentencer to  
4 distinguish those who deserve capital punishment from those who  
5 do not, the circumstance must provide a principled basis for  
6 doing so. If the sentencer fairly could conclude that an  
7 aggravating circumstance applies to every defendant eligible for  
8 the death penalty, the circumstance is constitutionally infirm."

9 (Arave v. Creech (1993) 507 U.S. 463, 474, citing *Maynard v.*  
10 *Cartwright* (1988) 496 U.S. 356, 364: "invalidating aggravating  
11 circumstance that 'an ordinary person could honestly believe'  
12 described every murder," and, *Godfrey v. Georgia* (1980) 446 U.S.  
13 420, 428-429: "A person of ordinary sensibility could fairly  
14 characterize almost every murder as 'outrageously or wantonly  
15 vile, horrible and inhuman.'")

16 It cannot fairly be said that 'every murder' could be  
17 categorized as "especially heinous, atrocious or cruel" under the  
18 Board regulations, since the defining factors contained in  
19 subdivisions (A)-(E) clearly narrow the group of cases to which it  
20 applies. Although Petitioner also argues that the "vague statutory  
21 language is not rendered more precise by defining it in terms or  
22 synonyms of equal or greater uncertainty" (*People v. Superior Court*  
23 (*Engert*) (1982) 31 Cal.3d 797, 803, *Pryor v. Municipal Court* (1979)  
24 25 Cal.3d 238, 249. See also *Walton v. Arizona* (1990) 497 U.S. 639,  
25 654), the factors in those subdivisions are not themselves vague or  
26 uncertain. The mere fact that there may be some subjective component  
27 (such as "exceptionally callous" disregard for human suffering) does  
28 not render that factor unconstitutionally vague. The proper degree  
of definition of such factors is not susceptible of mathematical  
precision, but will be constitutionally sufficient if it gives  
meaningful guidance to the Board.

29 A law is void for vagueness if it "fails to provide adequate  
30 notice to those who must observe its strictures and  
31 impermissibly delegates basic policy matters to policemen,  
32 judges, and juries for resolution on an ad hoc and subjective  
33 basis, with the attendant dangers of arbitrary and

1 discriminatory application." (People v. Rubalcava (2000) 23  
2 Cal.4th 322, 332, quoting People ex rel. Gallo v. Acuna (1997)  
3 14 Cal. 4th 1090, 1116, quoting Grayned v. City of Rockford  
4 (1972) 408 U.S. 104, 108-109.)

5 A review of cases expressing approval of definitions to limit the  
6 application, of otherwise vague terms in death penalty statutes leads  
7 inextricably to the conclusion that the limiting factors in §2402(c)  
8 easily pass constitutional muster. An Arizona statute was upheld  
9 that provided a crime is committed in an 'especially cruel manner'  
10 when the perpetrator inflicts mental anguish or physical abuse before  
11 the victim's death," and that "mental anguish includes a victim's  
12 uncertainty as to his ultimate fate." (Walton v. Arizona (1990) 497  
13 U.S. 639, 654.) Similarly, the court in Maynard v. Cartwright, 486  
14 U.S. at 364-365, approved a definition that would limit Oklahoma's  
15 "especially heinous, atrocious, or cruel" aggravating circumstance to  
16 murders involving "some kind of torture or physical abuse. In  
17 Florida, the statute authorizing the death penalty if the crime is  
18 "especially heinous, atrocious, or cruel," satisfied due process  
19 concerns where it was further defined as "the conscienceless or  
20 pitiless crime which is unnecessarily torturous to the victim."  
21 State v. Dixon (1973) 283 So. 2d 1 at p. 9.

22 Here, the factors in subdivisions (A)-(E) provide equally clear  
23 limiting construction to the term "especially heinous, atrocious, or  
24 cruel" in §2402(c).

25 Has the Board Engaged in a Pattern of Arbitrary Application of the  
26 Criteria?

27 As previously noted, 15 CCR §2402 provides detailed criteria for  
28 determining whether a crime is "exceptionally heinous, atrocious or  
cruel" such that it tends to indicate unsuitability for parole. Our

1 courts have held that to fit within those criteria and thus serve as  
2 a basis for a finding of unsuitability, the circumstances of the  
3 crime must be more aggravated or violent than the minimum necessary  
4 to sustain a conviction for that offense. (*In re Rosenkrantz* (2002)  
5 29 Cal.4th 616, 682-683.) Where that is the case, the nature of the  
6 prisoner's offense, alone, can constitute a sufficient basis for  
7 denying parole. (*In re Dannenberge*, *supra*, 34 Cal.4th at p. 1095.)

8 Petitioner claims that those criteria, even if constitutionally  
9 sound, have been applied by the Board in an arbitrary and capricious  
10 manner rendering them devoid of any meaning whatever. The role of  
11 the reviewing court under these circumstances has been addressed  
12 previously in the specific context of Parole Board actions:

13 " [Courts have] an obligation, however, to look beyond the facial  
14 validity of a statute that is subject to possible  
15 unconstitutional administration since a law though fair on its  
16 face and impartial in appearance may be open to serious abuses  
17 in administration and courts may be imposed upon if the  
18 substantial rights of the persons charged are not adequately  
19 safeguarded at every stage of the proceedings. We have  
20 recognized that this court's obligation to oversee the execution  
21 of the penal laws of California extends not only to judicial  
22 proceedings, but also to the administration of the Indeterminate  
23 Sentence Law." (*In re Rodriguez* (1975) 14 Cal.3d 639, 648;  
24 quoting *Minnesota v. Probate Court* (1940) 309 U.S. 270, 277.)

25 Similarly, in *In re Minnis* (1972) 7 Cal.3d 639, 645, the case  
26 closest on point to the present situation, the California Supreme  
27 Court stated: "This court has traditionally accepted its  
responsibility to prevent an authority vested with discretion from  
implementing a policy which would defeat the legislative motive for  
enacting a system of laws." Where, as here, the question is whether  
determinations are being made in a manner that is arbitrary and  
capricious, judicial oversight "must be extensive enough to protect

1 limited right of parole applicants 'to be free from an arbitrary  
2 parole decision... and to something more than mere pro-forma  
3 consideration.'" (*In re Ramirez* (2001) 94 Cal.App.4th 549 at p. 564,  
4 quoting *In re Sturm* (1974) 11 Cal.3d 258 at p. 268.)

5 This Court, therefore, now examines Petitioner's "as applied"  
6 void for vagueness challenge.

7

8 The Evidence Presented

9 A similar claim to those raised here, involving allegations of  
10 abuse of discretion by the Board in making parole decisions, was  
11 presented to the Court of Appeal in *In re Ramirez*, *supra*. The court  
12 there observed that such a "serious claim of abuse of discretion"  
13 must be "adequately supported with evidence" which should be  
14 "comprehensive." (*Ramirez, supra*, 94 Cal.App.4th at p. 564, fn. 5.)  
15 The claim was rejected in that case because there was not "a  
16 sufficient record to evaluate." (*Ibid.*) In these cases, however,  
17 there is comprehensive evidence offered in support of Petitioner's  
18 claims.

19 Discovery orders were issued in five different cases involving  
20 life term inmates (Petitioners) who all presented identical claims.<sup>1</sup>

21

22 <sup>1</sup> This Court takes judicial notice of the several other cases currently  
23 pending (Lewis #68038, Jameison #71194, Bragg #108543, Ngo #127611.) which  
24 raise this same issue and in which proof was presented on this same point.  
25 (Evidence Code § 452(d). See specifically, in the habeas corpus context,  
In re Vargus (2000) 83 Cal.App.4th 1125, 1134-1136, 1143, in which judicial  
notice was taken of the evidence in four other cases and in which the court  
noted: "Facts from other cases may assist petitioner in establishing a  
pattern." See generally *McKell v. Washington Mutual, Inc.* (2006) 142  
Cal.App.4th 1457, 1491: "trial and appellate courts... may properly take  
judicial notice of... established facts from both the same case and other  
cases." And see *AB Group v. Martin* (1997) 59 Cal.App.4th 1022, 1036:  
judicial notice taken of other cases when matters are "just as relevant to  
the present [case] as they are to the others.")

1 The purpose of the discovery was to bring before the Court a  
2 comprehensive compilation and examination of Board decisions in a  
3 statistically significant number of cases. The Board decisions under  
4 examination consisted of final decisions of the Board for life-term  
5 inmates convicted of first or second degree murder and presently  
6 eligible for parole. Included were all such decisions issued in  
7 certain months, chosen by virtue of their proximity in time to the  
8 parole denials challenged in the pending petitions. All Board  
9 decisions in the months of August, September and October of 2002,  
10 July, August, September, October, November, and December of 2003,  
11 January and February of 2004, February of 2005, and January of 2006  
12 were compiled. This resulted in a review of 2690 cases decided in a  
13 total of 13 months.

14 The purpose of the review was to determine how many inmates had  
15 actually been denied parole based in whole or in part on the Board's  
16 finding that their commitment offense fits the criteria set forth in  
17 Title 15 S2402(c)(1) as "especially heinous, atrocious or cruel." A  
18 member of the research team conducting the review, Karen Rega,  
19 testified that in its decisions the Board does not actually cite CCR  
20 rule S2402(c), but consistently uses the specific words or phrases  
21 ("verbiage from code") contained therein, so that it could easily be  
22 determined when that criteria was being applied. (For example,  
23 finding "multiple victims" invokes S2402(c)(1)(A); finding the crime  
24 "dispassionate" "calculated" or "execution style" invokes  
25 S2402(c)(1)(B); that a victim was "abused" "mutilated" or "defiled"  
26 invokes S2402(c)(1)(C); a crime that is "exceptionally callous" or  
27 demonstrated a "disregard for human suffering" fits criteria  
28

1 §2402(c)(1)(D); and finding the motive for the crime "inexplicable"  
2 or "trivial" invokes §2402(c)(1)(E).)

3 Petitioners provided charts, summaries, declarations, and the  
4 raw data establishing the above in the cases of Lewis #68038,  
5 Jameison #71194, Bragg #108543, and Ngo #127611. In this case  
6 (Criscione #71614) the evidence was presented somewhat differently.  
7 Both to spread the burden of the exhaustive examination, and to  
8 provide a check on Petitioners' methods, this Court ordered  
9 Respondent to undertake an examination of two randomly chosen months  
10 in the same manner as Petitioner had been doing. Respondent complied  
11 and provided periodic updates in which they continued to report that  
12 at all "the relevant hearings the Board relied on the commitment  
13 offense as a basis for denying parole." (See "Respondent's Final  
14 Discovery Update" filed April 5, 2007.) At the evidentiary hearing  
15 on this matter counsel for Respondents stipulated that "in all of  
16 those cases examined [by Respondent pursuant to the Criscione  
17 discovery orders] the Board relied on the commitment offense as a  
18 basis for denying parole." (See pages 34-35 of the June 1, 2007,  
19 evidentiary hearing transcript.)

20 The result of the initial examination was that in over 90  
21 percent of cases the Board had found the commitment offense to be  
22 "especially heinous, atrocious or cruel" as set forth in Title 15  
23 §2402(c)(1). In the remaining 10% of cases either parole had been  
24 granted, or it was unclear whether §2402(c)(1) was a reason for the  
25 parole denial. For all such cases, the decisions in the prior  
26 hearing for the inmate were obtained and examined. In every case,  
27 the Board had determined at some point in time that every inmates

28

1 crime was "especially heinous, atrocious or cruel" under Title 15  
2 §2402(c)(1).

Thus, it was shown that 100% of commitment offenses reviewed by the Board during the 13 months under examination were found to be "especially heinous, atrocious or cruel" under Title 15 §2402(c)(1).

5 "especially relevant." 6  
6 A further statistic of significance in this case is that there  
7 are only 9,750 inmates total who are eligible for, and who are  
8 currently receiving, parole consideration hearings as life term  
9 inmates. (See "Respondent's Evidentiary Hearing Brief," at p. 4,  
10 filed April 16, 2007.)

## USE OF STATISTICS

19 inference of intentional discrimination.  
20 More recently, the United States Supreme Court, in *Miller-El v.*  
21 *Cockrell* (2003) 537 U.S. 322, 154 L.Ed.2d 931, when examining a habeas  
22 petitioner's allegations that the prosecutor was illegally using his  
23 peremptory challenges to exclude African-Americans from the  
24 petitioner's jury, noted that "the statistical evidence alone" was  
25 compelling. The high court analyzed the numbers and concluded:  
26 "Happenstance is unlikely to produce this disparity." (See also  
27 *People v. Hofsheier* (2004) 117 Cal.App.4th 438 in which "statistical

1 evidence" was noted as possibly being dispositive. And see *People v.*  
2 *Flores* (2006) 144 Cal.App.4th 625 in which a statistical survey and  
3 analysis, combined into an "actuarial instrument" was substantial  
4 proof.)

5 A statistical compilation and examination such as has been  
6 presented in these cases is entirely appropriate and sufficient  
7 evidence from which to draw sound conclusions about the Board's  
8 overall methods and practices.

9

10 THE EXPERT'S TESTIMONY

11 Petitioners provided expert testimony from Professor Mohammad  
12 Kafai regarding the statistics and the conclusions that necessarily  
13 follow from them. Professor Kafai is the director of the statistics  
14 program at San Francisco State University, he personally teaches  
15 statistics and probabilities, and it was undisputed that he was  
16 qualified to give the expert testimony that he did. No evidence was  
17 presented that conflicts or contradicts the testimony and conclusions  
18 of Professor Kafai. By stipulation of the parties, Professor Kafai's  
19 testimony was to be admissible and considered in the cases of all  
20 five petitioners. (See page 35 of the June 1, 2007, evidentiary  
21 hearing transcript.)

22 Professor Kafai testified that the samples in each case, which  
23 consisted of two or three months of Board decisions, are  
24 statistically sufficient to draw conclusions about the entire  
25 population of life term inmates currently facing parole eligibility  
26 hearings. Given that every inmate within the statistically  
27 significant samples had his or her crime labeled "'particularly  
28

1 | egregious'" or "especially heinous, atrocious or cruel" under Title  
2 | 15 §2402(c)(1), it can be mathematically concluded that the same  
3 | finding has been made for every inmate in the entire population of  
4 | 9,750. Although he testified that statisticians never like to state  
5 | unequivocally that something is proven to a 100% certainty, (because  
6 | unforeseen anomalies are always theoretically possible,) he did  
7 | indicate the evidence he had thus far examined came as close to that  
8 | conclusion as could be allowed. Not surprisingly, Professor Kafai  
9 | also testified that "more than 50% can't by definition constitute an  
10 | exception."

11 | Having found the data provided to the expert to be sound this  
12 | Court also finds the expert's conclusions to be sound. In each of  
13 | the five cases before the Court over 400 inmates were randomly chosen  
14 | for examination. That number was statistically significant and was  
15 | enough for the expert to draw conclusions about the entire population  
16 | of 9,750 parole eligible inmates. The fact that the approximately  
17 | 2000 inmates examined in the other cases also had their parole denied  
18 | based entirely or in part on the crime itself (§2402(c)(1)), both  
19 | corroborates and validates the expert's conclusion in each individual  
20 | case and also provides an overwhelming and irrefutable sample size  
21 | from which even a non expert can confidently draw conclusions.

22 |

23 |

#### DISCUSSION

24 | Although the evidence establishes that the Board frequently says  
25 | parole is denied "first," "foremost," "primarily," or "mainly,"  
26 | because of the commitment offense, this statement of primacy or  
27 | weight is not relevant to the question now before the Court.

28 |

1 Petitioners acknowledge that the Board generally also cites other  
 2 reasons for its decision. The question before this Court, however,  
 3 is not whether the commitment offense is the primary or sole reason  
 4 why parole is denied -- the question is whether the commitment  
 5 offense is labeled "particularly egregious" and thus could be used,  
 6 under Dannenberg, primarily or exclusively to deny parole.

7 The evidence proves that in a relevant and statistically  
 8 significant period where the Board has considered life term offenses  
 9 in the context of a parole suitability determination, every such  
 10 offense has been found to be "particularly egregious" or "especially  
 11 heinous, atrocious or cruel."<sup>2</sup> This evidence conclusively  
 12 demonstrates that the Board completely disregards the detailed  
 13 standards and criteria of §2402(c). "Especially" means particularly,  
 14 or "to a distinctly greater extent or degree than is common."<sup>3</sup> (EC §  
 15 451(e).) By simple definition the term "especially" as contained in  
 16 section 2402(C)(1) cannot possibly apply in 100% of cases, yet that  
 17 is precisely how it has been applied by the Board. As pointed out by  
 18 the Second District Court of Appeal, not every murder can be found to  
 19 be "atrocious, heinous, or callous" or the equivalent without "doing

20       <sup>2</sup> In a single case out of the 2690 that were examined Petitioner has conceded that  
 21 the Board did not invoke §2402(c)(1). This Court finds that concession to be  
 22 improvidently made and the result of over caution. When announcing the decision at  
 23 the initial hearing of S. Fletcher (H-10230) on 4/6/06, the commissioner did begin  
 24 by stating "I don't believe this offense is particularly aggravated..." However  
 25 the commissioner proceeds to describe the crime as a drug deal to which Fletcher  
 26 brought a gun so "we could say there was some measure of calculation in that." The  
 27 commissioner continued by observing that the reason someone would bring a gun to a  
 28 drug transaction was to make sure things went according to their plan "so I guess  
 we can say that that represents calculation and perhaps it's aggravated to that  
 extent." As is the Board's standard practice, by using the word 'calculated' from  
 §2402(c)(1)(b) the Board was invoking that regulation. Certainly if Mr. Fletcher  
 had brought a habeas petition Respondent's position would be that there is 'some  
 evidence' supporting this. The ambiguity created by the commissioner's initial  
 statement was cleared up several pages later when he announces that "based upon the  
 crime coupled with ..." parole was denied for four years. (See *In re Burns* (2006)  
 136 Cal.App.4th 1318, 1326, holding §2402(c)(1) criteria are necessary for a multi-  
 year denial.)

1 violence" to the requirements of due process. (*In re Lawrence* (2007)  
2 150 Cal.App.4th 1511, 1557.) This is precisely what has occurred  
3 here, where the evidence shows that the determinations of the Board  
4 in this regard are made not on the basis of detailed guidelines and  
5 individualized consideration, but rather through the use of all  
6 encompassing catch phrases gleaned from the regulations.

7

8 THE BOARD'S METHODS

9 Because it makes no effort to distinguish the applicability of  
10 the criteria between one case and another, the Board is able to force  
11 every case of murder into one or more of the categories contained in  
12 §2402(c).

13 For example, if the inmate's actions result in an instant death  
14 the Board finds that it was done in a "dispassionate and calculated  
15 manner, such as an execution-style murder." At the same time the  
16 Board finds that a murder not resulting in near instant death shows a  
17 "callous disregard for human suffering" without any further analysis  
18 or articulation of facts which justify that conclusion. If a knife  
19 or blunt object was used, the victim was "abused, defiled, or  
20 mutilated." If a gun was used the murder was performed in a  
21 "dispassionate and calculated manner, such as an execution-style  
22 murder." If bare hands were used to extinguish another human life  
23 then the crime is "particularly heinous and atrocious."

24 Similarly, if several acts, spanning some amount of time, were  
25 necessary for the murder the Board may deny parole because the inmate  
26 had "opportunities to stop" but did not. However if the murder was

27

28 <sup>3</sup> Princeton University World Net Dictionary (2006).

1 accomplished quickly parole will be denied because it was done in a  
2 dispassionate and calculated manner and the victim never had a chance  
3 to defend themselves or flee. If the crime occurred in public, or  
4 with other people in the vicinity, it has been said that the inmate  
5 "showed a callous disregard" or "lack of respect" for the  
6 "community." However if the crime occurs when the victim is found  
7 alone it could be said that the inmate's actions were aggravated  
8 because the victim was isolated and more vulnerable.

9 In this manner, under the Board's cursory approach, every murder  
10 has been found to fit within the unsuitability criteria. What this  
11 reduces to is nothing less than a denial of parole for the very  
12 reason the inmates are present before the Board - i.e. they committed  
13 murder. It is circular reasoning, or in fact no reasoning at all,  
14 for the Board to begin each hearing by stating the inmate is before  
15 them for parole consideration, having passed the minimum eligible  
16 parole date based on a murder conviction, and for the Board to then  
17 conclude that parole will be denied because the inmate committed acts  
18 that amount to nothing more than the minimum necessary to convict  
19 them of that crime. As stated quite plainly by the Sixth District:  
20 "A conviction for murder does not automatically render one unsuitable  
21 for parole." (Smith, *supra*, 114 Cal.App.4th at p. 366, citing  
22 Rosenkrantz, *supra*, 29 Cal.4th at p. 683.)

23 In summary, when every single inmate is denied parole because  
24 his or her crime qualifies as a §2402(c)(1) exception to the rule  
25 that a parole date shall normally be set, then the exception has  
26 clearly swallowed the rule and the rule is being illegally  
27 interpreted and applied. When every single life crime that the Board  
28

1 examines is "particularly egregious" and "especially heinous,  
 2 atrocious or cruel" it is obvious that the Board is operating without  
 3 any limits and with unfettered discretion.

4 Other examples of the failure to 'connect up' the facts of the  
 5 individual case with the criteria and the ultimate findings abound in  
 6 the decisions of the reviewing courts. Some of the state cases to  
 7 have reversed Parole Board or Governor abuses of discretion in  
 8 denying parole include *In re Roderick*, *In re Cooper*, *In re Lawrence*,  
 9 *In re Barker*, *In re Gray*, *In re Lee*, *In re Elkins*, *In re Weider*, *In*  
 10 *re Scott*, *In re Deluna*, *In re Ernest Smith*, *In re Mark Smith*, and *In*  
 11 *re Capistran*.

12 When "the record provides no reasonable grounds to reject, or  
 13 even challenge, the findings and conclusions of the psychologist and  
 14 counselor concerning [the inmate's] dangerousness" the Board may not  
 15 do so. (*In re Smith* (2003) 114 Cal.App.4th 343, 369.)

16 When an inmate, although only convicted of a second degree  
 17 murder, has been incarcerated for such time that, with custody  
 18 credits, he would have reached his MEPD if he had been convicted of a  
 19 first, the Board must point to evidence that his crime was aggravated  
 20 or exceptional even for a first degree murder if they are going to  
 21 use the crime as a basis for denying parole. (*In re Weider* (2006)  
 22 145 Cal.App.4th 570, 582-583.)<sup>4</sup>

23

---

24 <sup>4</sup> This rule, rooted in Justice Moreno's concurrence in *Rosenkrantz*, *supra*, is  
 25 particularly applicable in this case. Petitioner was convicted of second degree,  
 but acquitted of first degree, murder over 25 years ago. (*People v. Criscione*  
 26 (1981) 125 Cal.App.3d 275.) With his custody credits he is beyond the matrix even  
 27 had he been convicted of a first. In a currently pending habeas petition in which  
 he challenges his 2007 parole denial the first reason the Board gave was the crime  
 itself and the presiding commissioner explained, "His actions go well beyond the  
 minimum necessary for a conviction of murder in the second degree." (Decision page  
 2 of 4/2/07 transcript.) For the Board to penalize the Petitioner for the fact  
 28 that he was acquitted of first degree is further proof of their willfulness and

1       A "petitioner's young age at the time of the offense" must be  
 2 considered. (In re Elkins (2006) 144 Cal.App.4th 475, 500, quoting  
 3 Rosenkrantz v. Marshall (C.D.Cal. 2006) 444 F. Supp. 2d 1063, 1065,  
 4 1085: "The reliability of the facts of the crime as a predictor for  
 5 his dangerousness was diminished further by his young age of 18, just  
 6 barely an adult. 'The susceptibility of juveniles to immature and  
 7 irresponsible behavior means their irresponsible conduct is not as  
 8 morally reprehensible as that of an adult.'")<sup>5</sup>

9       The Board's formulaic practice of stating §2402(c)(1) phrased in  
 10 a conclusory fashion, and then stating "this is derived from the  
 11 facts" without ever linking the two together, is insufficient. (In  
 12 re Roderick, (2007) \_\_\_ Cal.App.4th \_\_\_ (A113370): "At minimum, the  
 13 Board is responsible for articulating the grounds for its findings  
 14 and for citing to evidence supporting those grounds." (See also In  
 15 re Barker (2007) 151 Cal.App.4th 346, 371, disapproving  
 16 "conclusorily" announced findings.)

17       After two decades, mundane "crimes have little, if any,  
 18 predictive value for future criminality. Simply from the passing of  
 19 time, [an inmate's] crimes almost 20 years ago have lost much of  
 20 their usefulness in foreseeing the likelihood of future offenses than  
 21 if he had committed them five or ten years ago." (In re Lee (2006)  
 22 143 Cal.App.4th 1400, 1412.) It should be noted that this rule

---

23 bias. The jury had a reasonable doubt that Petitioner committed first degree  
 24 murder, but under the Board's 'reasoning' and 'analysis' this puts him in a worse  
 25 position than if they had not. Had the jury convicted him of the greater offense  
 26 Petitioner has served so much time that he would already be having subsequent  
 27 parole hearings on a first and the Board would not have been able to use the 'sorts  
 28 of evidence' of first degree behavior against him. As observed previously, the  
 Board's position in this regard is "so ridiculous that simply to state it is to  
 refute it." (Weider, *supra*, 145 Cal.App.4th at p. 583.)  
 This point is particularly significant in the case of Mike Ngo. Mr. Ngo was only  
 18 at the time of his crime. The impetus behind the shooting was youth group or

1 applies with even more force when the Board is relying on any  
2 criminality that occurred before the crime. In that situation, just  
3 as with the crime itself, the Board must explain why such old events  
4 have any relevance and especially when the inmate has spent a decade  
5 as a model prisoner.

6 Murders situationally related to intimate relationships are  
7 unfortunately commonplace because emotions are strongest in such  
8 domestic settings. When a murder occurs because of "stress unlikely  
9 to be reproduced in the future" this is a factor that affirmatively  
10 points towards suitability. (In re Lawrence (2007) 150 Cal.App.4th  
11 1511 and cases cited therein.)

12 "The evidence must substantiate the ultimate conclusion that the  
13 prisoner's release currently poses an unreasonable risk of danger to  
14 the public. It violates a prisoner's right to due process when the  
15 Board or Governor attaches significance to evidence that forewarns no  
16 danger to the public." (In re Tripp (2007) 150 Cal.App.4th 306,  
17 313.)

18 The Board "cannot rely on the fact that the killing could have  
19 been avoided to show the killing was especially brutal." (In re  
20 Cooper (2007) 153 Cal.App.4th 1043, 1064.)

21 The Board's focus must be upon how the inmate "actually  
22 committed his crimes" not the "incorporeal realm of legal  
23 constructs." (Lee, *supra*, 143 Cal.App.4th at p. 1413.) This is  
24 especially significant when the murder conviction is based on the  
25 felony murder rule, provocative act doctrine, or accomplice liability  
26 such that the inmate did not intend to kill or may not have even been  
27 gang rivalries, posturing, and threats which mature adults would not have been  
28

1 the actual killer.

2 The Board has ample guidance before it in the decisions of the  
3 various reviewing courts to constrain its abuse, but has failed to  
4 avail itself of the opportunity to do so.

5

6 SEPARATION OF POWERS DOCTRINE

7 The evidence presented, as discussed above, has established a  
8 void for vagueness "as applied" due process violation. That same  
9 evidence also proves a separate but related Constitutional violation.  
10 -- an as applied separation of powers violation.

11 The separation of powers doctrine provides "that the legislative  
12 power is the power to enact statutes, the executive power is the  
13 power to execute or enforce statutes, and the judicial power is the  
14 power to interpret statutes and to determine their  
15 constitutionality." (*Lockyer v. City and County of San Francisco*  
16 (2004) 33 Cal.4th 1055, 1068.) Because the evidence has proven the  
17 Board is not executing/enforcing the legislature's statutes as  
18 intended it is this Court's duty to intervene. The question here is  
19 whether the Board is violating the separation of powers doctrine by  
20 appropriating to itself absolute power over parole matters and  
21 disregarding the limits and guidelines placed by the statute.<sup>6</sup>

22 "Government Code section 11342.2 provides: 'Whenever by the

23  
24 caught up in,  
25 "It is settled that Administrative regulations that violate acts of the  
26 Legislature are void and no protestations that they are merely an exercise of  
27 administrative discretion can sanctify them. They must conform to the legislative  
will if we are to preserve an orderly system of government. Nor is the motivation  
of the agency relevant: It is fundamental that an administrative agency may not  
28 usurp the legislative function, no matter how altruistic its motives are."  
(*Agricultural Labor Relations Board v. Superior Court of Tulare County* (1976) 16  
Cal.3d 392, 419 quoting *Morris v. Williams* (1967) 67 Cal.2d 733, 737, and *City of  
San Joaquin v. State Bd. of Equalization* (1970) 9 Cal.App.3d 365, 374.)

1 express or implied terms of any statute a state agency has authority  
2 to adopt regulations to implement, interpret, make specific or  
3 otherwise carry out the provisions of the statute, no regulation  
4 adopted is valid or effective unless consistent and not in conflict  
5 with the statute and reasonably necessary to effectuate the purpose  
6 of the statute.' Administrative regulations that alter or amend the  
7 statute or enlarge or impair its scope are void and courts not only  
8 may, but it is their obligation to strike down such regulations."  
9 (*Pulaski v. Occupational Safety & Health Stds.* Bd. (1999) 75  
10 Cal.App.4th 1315, 1341, citations omitted.)

11 The vice of overbroad and vague regulations such as are at issue  
12 here is that they can be manipulated, or 'interpreted,' by executive  
13 agencies as a source of unfettered discretion to apply the law  
14 without regard to the intent of the people as expressed by the  
15 legislature's enabling statutes. In short, agencies usurp unlimited  
16 authority from vague regulations and become super-legislatures that  
17 are unaccountable to the people. As it has sometimes been framed and  
18 addressed in the case law, a vague or all encompassing standard runs  
19 the risk of "violat[ing] the separation of powers doctrine by  
20 'transforming every [executive decisionmaker] into a "mini-  
21 legislature", with the power to determine on an ad hoc basis what  
22 types of behavior [satisfy their jurisdiction].'" (*People v. Ellison*  
23 (1998) 68 Cal.App.4th 203, 211, quoting *People v. Superior Court*  
24 (*Caswell*) (1988) 46 Cal.3d 381, 402.)

25 "It is concern about 'encroachment and' aggrandizement,' the  
26 [United States Supreme Court] reiterated, that has animated its  
27 separation of powers jurisprudence. 'Accordingly, we have not  
28

1 hesitated to strike down provisions of law that either accrete to a  
2 single Branch powers more appropriately diffused among separate  
3 Branches or that undermine the authority and independence of one or  
4 another coordinate Branch." (Kasler v. Lockyer (2000) 23 Cal.4th  
5 472, 493, quoting *Mistrutta v. United States* (1989) 488 U.S. 361,  
6 382.) This articulation of the principle speaks directly to the  
7 situation at hand. The Board, by its enactment and interpretation of  
8 Title 15, §2402, has appropriated to itself absolute power over  
9 'lifer' matters. Overreaching beyond the letter and spirit of the  
10 Penal Code provisions, Title 15, §2402(c)(1) has been interpreted by  
11 the Board to supply the power to declare every crime enough to deny  
12 parole forever. The fact that Title 15, §2402, has been invoked in  
13 every case, but then sometime later not invoked, tends to show either  
14 completely arbitrary and capricious behavior or that unwritten  
15 standards are what really determine outcomes. In either event, all  
16 pretenses of taking guidance from, or being limited by, the  
17 legislature's statutes have been abandoned. "[I]t is an elementary  
18 proposition that statutes control administrative interpretations."  
19 (*Ohio Casualty Ins. Co. v. Garamendi* (2006) 137 Cal.App.4th 64, 78.)  
20 Title 15 §2402 as applied, however, has no controls or limitations.

21 The PC § 3041(b) exception to the rule can only be invoked when  
22 the "gravity of the current convicted offense or offenses, or the  
23 timing and gravity of current or past convicted offense or offenses,  
24 is such that consideration of the public safety requires a more  
25 lengthy period of incarceration for this individual." The word  
26 "gravity" is a directive for comparison just as "more lengthy"  
27 indicates a deviation from the norm. While Dannenberg held there  
28

09/12/2007 11:00

1 does not need to be intra case comparison for the purposes of term  
2 uniformity or proportionality, there necessarily has to be some sort  
3 of comparison for the purposes of adhering to the legislative mandate  
4 that parole is available. The Board employs no meaningful yardstick  
5 in measuring parole suitability. This is a violation of the  
6 separation of powers doctrine. (People v. Wright (1982) 30 Cal.3d.  
7 705, 712-713. And see Terhune v. Superior Court (1998) 65  
8 Cal.App.4th 864, 872-873. Compare Whitman v. Am. Trucking Ass'ns  
9 (2001) 531 U.S. 457, 472, describing a delegation challenge as  
10 existing when the legislature fails to lay down "an intelligible  
11 principle to which the person or body authorized to act is directed  
12 to conform.")

13 RESPONDENT'S POSITION

14 The Attorney General has suggested, without pointing to any  
15 concrete examples, that it is possible that the Board, when invoking  
16 the crime as a reason to deny parole, is not placing it within  
17 §2402(c)(1) but instead using it as some sort of 'lesser factor'  
18 which, only when combined with other unsuitability criteria, can  
19 contribute to a valid parole denial. The two problems with this  
20 position are, first, there is no evidentiary support for this  
21 assertion, and second, it would have no impact on the constitutional  
22 infirmities outlined and proven above.

23 Even if Respondent had produced evidence that the Board was  
24 utilizing the crime as a 'lesser factor' which needs others to fully  
25 support a parole denial, the Board would then be admitting it was  
26 denying parole, in part, for the very reason that the person is  
27

28

1 before the panel and eligible for parole in the first place - the  
2 commitment offense. Respondent's argument suggests that a crime that  
3 only qualified as the Dannenberg "minimum necessary" could still be  
4 invoked as a reason for denying parole. Respondent argues that when  
5 the crime is invoked 'not in the Dannenberg sense,' there must be  
6 other reasons for the parole denial and the crime alone would not be  
7 enough in this context. This position is inconsistent with the law  
8 and fundamental logic.

9 A crime qualifies under Dannenberg when it is "particularly  
10 egregious," or one where "no circumstances of the offense reasonably  
11 could be considered more aggravated or violent than the minimum  
12 necessary to sustain a conviction for that offense." (Dannenberg,  
13 *supra*, 34 Cal.4th at pp. 1094-1095.) These are the only two choices.

14 If a crime consists of only the bare elements then it is not  
15 aggravated and it cannot, in and-of itself, serve as a basis for  
16 parole denials once the inmate becomes eligible for parole. It is  
17 the reason an inmate may be incarcerated initially for the equivalent  
18 of 15 or 25 years, and then examined to determine rehabilitation  
19 efforts when they come before the Board, but a crime that is no more  
20 than the bare minimum cannot be factored into the equation pursuant  
21 to PC § 3041(b) or any of the case law interpreting it.

22 In oral argument Respondent suggested a second way the  
23 commitment offense can be used outside of §2402(c)(1). If for  
24 example a crime had its roots in gang allegiances or rivalries and  
25 the inmate continued to associate with gangs while incarcerated, then  
26 an aspect of the crime, even if the crime otherwise consisted of no  
27 more than the minimum elements, could be combined with other behavior

28

1 to support a parole denial. Similarly, if a crime was rooted in an  
2 inmate's then existing drug addiction, and the Board was to point to  
3 a recent 115 involving drugs, the evidence that the inmate's drug  
4 issues had not been resolved would justify a parole denial even if  
5 the crime itself was not aggravated. A finding that the inmate is  
6 not suitable for release under these circumstances, however, is not  
7 based on the facts of the commitment offense as tending to show  
8 unsuitability. It is based on the conclusion that can be drawn about  
9 Petitioner's lack of rehabilitation or change since the offense, and  
10 thus, his present dangerousness.

11 Respondent has not demonstrated any flaws in Petitioner's  
12 methodology or analysis, nor provided any actual evidence of the  
13 crime being invoked other than pursuant to §2402(c)(1). Drawing  
14 conclusions from the Board's direct statements, or its precise  
15 recitations of the §2402(c)(1) language, logically indicates an  
16 invocation of §2402(c)(1), and Respondent's suggestion otherwise is  
17 insupportable.

18

19 THE QUESTION OF BIAS

20 Because the issue has been squarely presented, and strenuously  
21 argued by Petitioners, this Court is obligated to rule on the charge  
22 that the Board's actions prove an overriding bias and deliberate  
23 corruption of their lawful duties.

24 In the discrimination and bias case of *USPS Bd. of Governors v.*  
25 *Aikens* (1983) 460 U.S. 711, the United States Supreme Court  
26 acknowledged "there will seldom be 'eyewitness' testimony as to the  
27 [] mental processes" of the allegedly biased decisionmaker. Instead,

28

1 an examination of other cases for trends or patterns can provide the  
2 necessary circumstantial evidence. (See *Aikens, supra*, at footnote  
3 2.) Reaffirming that such circumstantial evidence will be sufficient  
4 the Court stated: "The law often obliges finders of fact to inquire  
5 into a person's state of mind. As Lord Justice Bowen said in  
6 treating this problem in an action for misrepresentation nearly a  
7 century ago, 'The state of a man's mind is as much a fact as the  
8 state of his digestion. It is true that it is very difficult to  
9 prove what the state of a man's mind at a particular time is, but if  
10 it can be ascertained it is as much a fact as anything else.'"  
11 (*Aikens*, at pp. 716-717, quoting *Edgington v. Fitzmaurice* (1885) 29  
12 Ch. Div. 459, 483.)<sup>7</sup>

13 The discovery in these cases was granted in part due to the  
14 Petitioners' *prima facie* showing of bias and the necessity that it be  
15 "adequately supported with evidence" if such evidence is available.  
16 (*Ramirez, supra*, 94 Cal.App.4th at p. 564, fn. 5. See also *Nasha v.*  
17 *City of Los Angeles* (2004) 125 Cal.App.4th 470, 483: "A party seeking  
18 to show bias or prejudice on the part of an administrative decision  
19 maker is required to prove the same 'with concrete facts.'") And see  
20 *State Water Resources Control Bd. Cases* (2006) 136 Cal.App.4th 674,  
21 841: "The challenge to the fairness of the adjudicator must set forth  
22 concrete facts demonstrating bias or prejudice." See also *Hobson v.*  
23

24 <sup>7</sup> As occurred in *Aikens, supra*, and as suggested in prior orders of this Court,  
25 Respondent should have provided direct evidence from the decisionmakers. While the  
26 fact that a Defendant does not explain his or her actions cannot be held against  
27 him, (*Griffin v. California* (1965) 380 U.S. 609, *Doyle v. Ohio* (1976) 426 U.S.  
610,) it is appropriate to give some weight to the consideration that the Board has  
failed to offer any direct evidence or explanation on its own behalf. While the  
case of *Hornung v. Superior Court* (2000) 81 Cal.App.4th 1095 stands for the  
proposition that Petitioner may not inquire into the Board members mental  
processes, Respondent is not precluded from offering such direct evidence if they  
were able to testify as to their good faith and conscientious efforts.

1 Hansen (1967) 269 F.Supp. 401, 502, the watershed Washington D.C.  
2 school desegregation case in which the court determined from a  
3 statistical and factual analysis that racial bias was influencing  
4 policy.)

5 In the case of *People v. Adams* (2004) 115 Cal.App.4th 243, 255,  
6 a similar claim of biased decision making was asserted and it was  
7 rejected because, although the defendant clearly articulated it, "he  
8 has not demonstrated it. Therefore, he has failed to bear his burden  
9 of showing a constitutional violation as a demonstrable reality, not  
10 mere speculation." In the present cases Petitioners have provided  
11 overwhelming concrete evidence. It is difficult to believe that the  
12 Board's universal application of §2402(c)(1) has been an inadvertent  
13 mistake or oversight on their part. It is hard to credit the Board's  
14 position that it does not know its own patterns and practices reveal  
15 a complete lack of standards or constraints on their power.  
16 Respondent's protestations ring hollow, and it seems a statistical  
17 impossibility, that the Board's use of "detailed" criteria in such a  
18 fashion that they are rendered meaningless is a result of good faith  
19 efforts on their part. That every murder is "especially heinous,  
20 atrocious or cruel," and can therefore be an exception to the rule  
21 that a parole date should be set, does not seem to be an accident on  
22 their part.

23 Although no court has thus far agreed with the accusation that  
24 the Board approaches its duties with a predetermination and a bias,  
25 no court has previously been presented the comprehensive evidence  
26 outlined herein. While this Court does not turn a blind eye to the  
27 reasonable conclusion that the Board's unconstitutional practices are  
28

1 willful, there is another possibility. The pattern of errors  
2 demonstrated by the discovery in this case, and the continuously  
3 growing body of Court of Appeal opinions finding consistent and  
4 persistent abuse of discretion, may instead be caused by the fact  
5 that the Board is simply overworked and substantively untrained. The  
6 impossibility of the blanket applicability of §2402(c)(1) may be only  
7 the result of sloppy preparation and inadvertent carelessness.

8 The Board must first be given an opportunity to comply with the  
9 necessary remedy provided by this court before it is possible to  
10 enter a finding of conscious bias and illegal sub rosa policy. To do  
11 otherwise would ignore the complexities and magnitude of the largely  
12 discretionary duties with which that Board is vested.

13

14

#### CONCLUSION

15 The conclusive nature of the proof in this case, and the  
16 suggestion of institutional bias do not preclude formulation of an  
17 remedy which will guarantee adequate restrictions on, and guidance  
18 for, the Board's exercise of discretion in making parole suitability  
19 determinations. The Board can be made to lawfully perform its duties  
20 if given explicit instructions.

21 As noted *supra*, a reason the proof in this case irrefutably  
22 establishes constitutional violations is because the Board does not,  
23 in actual fact, operate within the limiting construction of the  
24 regulations. The Board's expansive interpretation allows it to  
25 operate without any true standards. Although numerous rulings of  
26 both state and federal courts of appeal have invalidated the Board's  
27 application of the §2402(c) criteria to particular facts, the Board  
28

1 does not take guidance from these binding precedents and ignores them  
2 for all other purposes. In the most recent of these cases, *In re*  
3 *Roderick*, (2007) \_\_\_ Cal.App.4th \_\_\_ (A113370) the First District  
4 held four of five §2402 factors "found" by the Board to be  
5 unsupported by any evidence. At footnote 14 the court took the time  
6 to criticize the Board for its repeated use of a "stock phrase"  
7 "generically across the state." The court also clarified that "at  
8 minimum, the Board is responsible for articulating the grounds for  
9 its findings and for citing to evidence supporting those grounds."

10 There is nothing in the evidence presented that would allow any  
11 conclusion but that, without intervention of the Courts, the Board  
12 will ignore the lessons of these rulings in the future and continue  
13 to employ its formulaic approach of citing a criteria from  
14 §2402(c)(1), repeating the facts of the crime, but never  
15 demonstrating a logical connection between the two. This is the  
16 core problem with the Board's methodology -- they provide no  
17 explanation or rationale for the findings regarding the crime itself.

18 This practice results in violence to the requirements of due  
19 process and individualized consideration which are paramount to the  
20 appropriate exercise of its broad discretion.

21 The only solution is one that compels the Board to identify the  
22 logical connection between the facts upon which it relies and the  
23 specific criteria found to apply in the individual case. For  
24 example, the Board often finds that an inmate's motive is "trivial"  
25 without ever suggesting why, on these facts, that motive is not just  
26 as trivial as the motive behind any other murder. What motive is not  
27 trivial? By any definition "trivial" is a word of comparison and  
28

1 only has meaning when there can be examples that are not "trivial."  
2 Similarly, although the Sixth District made it plain four years  
3 ago that "all [] murders by definition involve some callousness," (In  
4 re Smith (2003) 114 Cal.App.4th 343, 345,) the Board has continued to  
5 deny countless paroles labeling the crime "callous" without ever  
6 suggesting what crime would not qualify as "callous" and without  
7 consistently explaining why the individual case before it  
8 demonstrates "exceptional" callousness.

9 Respondent has consistently refused to suggest what possible  
10 instances of murder would not fit the Board's amorphous application  
11 of the S2402 criteria. Citing Dannenberg, Respondent insists such  
12 comparative analysis is unnecessary. Respondent fundamentally  
13 misunderstands the Dannenberg holding.

14 The PC S 3041(b) exception to the rule can only be invoked when  
15 the "gravity of the current convicted offense or offenses, or the  
16 timing and gravity of current or past convicted offense or offenses,  
17 is such that consideration of the public safety requires a more  
18 lengthy period of incarceration for this individual." The word  
19 "gravity" is a directive for comparison just as "more lengthy"  
20 indicates a deviation from the norm. While Dannenberg held there  
21 does not need to be intra case comparison for the purposes of term  
22 uniformity or proportionality, there necessarily has to be some sort  
23 of comparison for the purposes of adhering to the legislative mandate  
24 that parole is available. This is implicit in S2402 because the  
25 qualifier "especially," in "especially heinous atrocious or cruel,"  
26 requires that some form of comparison be made. While the original  
27 drafters of S2402 seemed to have recognized this fact, the ongoing  
28

1 conduct of the Board has completely ignored it, and this is the  
2 essence of the due process violation Petitioners have asserted.  
3 As noted in his dissent in the recent case of *In re Roderick*,  
4 *supra*, Justice Sepulveda would have deferred to the Board's  
5 'exercise' of discretion because "Board members have both training  
6 and vast experience in this field. They conduct literally thousands  
7 of parole suitability hearings each year. The Board therefore has  
8 the opportunity to evaluate the egregiousness of the facts of a great  
9 number of commitment offenses. ... The Board's training and  
10 experience in evaluating these circumstances far exceeds that of  
11 most, if not all, judges." The evidence in this case, however,  
12 suggests a flaw in granting such deference. Since the Board  
13 continues to place every murder in the category of offenses "tending  
14 to show unsuitability," something is certainly wrong. Since the  
15 Board's vast experience is undeniable, the problem must be in the  
16 Board's training and understanding of the distinguishing features of  
17 the guidelines and criteria. Although Justice Sepulveda presumes  
18 that Board members receive substantive training, there is no evidence  
19 before this court to suggest that it does, and substantial  
20 circumstantial evidence to suggest that it does not.

21 In the vast numbers of Santa Clara County cases reviewed by this  
22 Court, the Board's formulaic decisions regarding the commitment  
23 offense do not contain any explanation or thoughtful reasoning.  
24 Instead, the Board's conclusionary invocation of words from  
25 §2402(c)(1) is linked to a repetition of the facts from the Board  
26 report by the stock phrase: "These conclusions are drawn from the  
27 statement of facts wherein ..." Thereafter the inmate files a habeas  
28

09/12/2007 11:00

1 corpus petition and Respondent, after requesting an extension of  
2 time, files a boilerplate reply asserting the Board's power is  
3 "great" and "almost unlimited" and thus any "modicum" of evidence  
4 suffices. Respondent does not cite or distinguish the expanding body  
5 of case law that is often directly on point as to specific findings  
6 made. Thereafter, if the writ is granted, the Board is directed to  
7 conduct a new hearing "in compliance with due process" and that order  
8 is appealed by Respondent. On appeal the order is usually upheld  
9 with modifications and in the end, after countless hours of attorney  
10 and judicial time, the Board conducts a new two hour hearing at which  
11 they abuse their discretion and violate due process in some different  
12 way.

13 This system is malfunctioning and must be repaired. The  
14 solution must begin with the source of the problem. The Board must  
15 make efforts to comply with due process in the first instance. The  
16 case law published over the last five years provides ample and  
17 sufficient guidelines and must be followed. Although the Board  
18 methods suggest it believes this to be optional, it is not.

19

20 THE REMEDY

21 Thus, it is the order of this Court that the Board develop,  
22 submit for approval, and then institute a training policy for its  
23 members based on the current and expanding body of published state,  
24 and federal, case law reviewing parole suitability decisions, and  
25 specifically the application of §2402 criteria. In addition to  
26 developing guidelines and further criteria for the substantive  
27 application of §2402 the Board must develop rules, policies and  
28

09/12/2007 11:00

1 procedures to ensure that the substantive guidelines are followed.

2 This Court finds its authority to impose this remedy to flow  
3 from the fundamental principles of judicial review announced over two  
4 centuries ago in *Marbury v. Madison* (1803) 5 U.S. (1 Cranch) 137.  
5 Citing that landmark case, the California Supreme Court has  
6 recognized "Under time-honored principles of the common law, these  
7 incidents of the parole applicant's right to 'due consideration'  
8 cannot exist in any practical sense unless there also exists a remedy  
9 against their abrogation." (*In re Sturm* (1974) 11 Cal.3d 258, 268.)

10 In *Sturm* the court directed that the Board modify its rules and  
11 procedures so that thereafter "The Authority will be required [,]  
12 commencing with the finality of this opinion, to support all its  
13 denials of parole with a written, definitive statement of its reasons  
14 therefor and to communicate such statement to the inmate concerned."

15 (*Sturm* at p. 273.)

16 Similarly, in the case of *Minnis*, *supra*, the California Supreme  
17 Court held the Board's policy of categorically denying parole to drug  
18 dealers was illegal. Based on its analysis the court there was  
19 clearly prepared to order that Board to modify its rules and  
20 procedures however such was unnecessary because the Board  
21 "voluntarily rescinded" the illegal policy. While the remedy in this  
22 case is of greater scope than that necessary in either *Sturm* or  
23 *Minnis*, *supra*, so too has been the showing of a systematic abuse of  
24 discretion and distortion of process.

25 The most recent case to address the court's roles and duties in  
26 overseeing the parole suitability process has been *In re Rosenkrantz*,  
27 *supra*, 29 Cal.4th 616. In that case the court explained that

28

1 judicial review of a Governor's parole determination comports with,  
2 and indeed furthers, separation of powers principles because the  
3 courts are not exercising "complete power" over the executive branch  
4 and do not "defeat or materially impair" the appropriate exercise or  
5 scope of executive duties. (Rosenkrantz at p. 662.) Citing *Strum,*  
6 *supra*, the court reaffirmed that a life term inmate's "due process  
7 rights cannot exist in any practical sense without a remedy against  
8 its abrogation." (Rosenkrantz at p. 664.)

9 The Rosenkrantz court also put forth what it believed was an  
10 extreme example but which, unfortunately, has been shown to exist in  
11 this case. The court stated: "In the present context, for example,  
12 judicial review could prevent a Governor from usurping the  
13 legislative power, in the event a Governor failed to observe the  
14 constitutionally specified limitations upon the parole review  
15 authority imposed by the voters and the Legislature." This is  
16 exactly what the evidence in this case has proven. As noted above  
17 the Board has arrogated to itself absolute authority, despite  
18 legislative limitations and presumptions, through the mechanism of a  
19 vague and all inclusive, and thus truly meaningless, application of  
20 standards. The remedy this Court is imposing is narrowly tailored to  
21 redress this constitutional violation.

22 The consequence of the Board's actions (of giving § 2402(c)(1)  
23 such a broadly all encompassing and universal application) is that  
24 they have unwittingly invalidated the basis of the California Supreme  
25 Court's holding in *Dannenberg*. The reason the four justice majority  
26 in *Dannenberg* upheld the Board's standard operating procedures in the  
27 face of the Court of Appeal and dissent position is because "the  
28

1 Board must apply detailed standards when evaluating whether an  
2 individual inmate is unsuitable for parole on public safety grounds."  
3 (Dannenberg at p. 1096, footnote 16. See also page 1080: "the  
4 regulations do set detailed standards and criteria for determining  
5 whether a murderer with an indeterminate life sentence is suitable  
6 for parole.") However, Petitioners in these cases have proven that  
7 there are no "detailed standards" at all. Instead the Board has  
8 systematically reduced the "detailed standards" to empty words. The  
9 remedy this Court orders, that there truly be "detailed standards,"  
10 requires the promulgation of further rules and procedures to  
11 constrain and guide the Board's powers. This remedy differs in  
12 specifics, but not in kind, from what courts have previously imposed  
13 and have always had the power to impose.

14 The Board must fashion a training program and further rules,  
15 standards and regulations based on the opinions and decisions of the  
16 state and federal court cases which provide a limiting construction  
17 to the criteria which are applied.<sup>9</sup> The Board must also make  
18 provisions for the continuing education of its commissioners as new  
19 case law is published and becomes binding authority. This Court will  
20 not, at this point, outline the requirements and lessons to be taken  
21 from the above cases. It is the Board's duty, in the first instance  
22 to undertake this task. The training program, and associated rules  
23 and regulations, shall be served and submitted to this Court, in

24  
25 <sup>9</sup>While the showing and analysis in this case was limited to § 2402(c)(1), the  
26 conclusions that the evidence compelled, that the Board has been carelessly  
27 distorting and misapplying the regulations, is not so limited. Accordingly, the  
28 training program that is necessary for the Board can not reasonably be limited to  
just § 2402(c)(1). Thus, to the extent case law recognizes, clarifies and  
establishes remedies for other due process violations they must also be  
incorporated into the necessary rules and training the Board is required to abide  
by.

1 writing, within 90 days. Counsel for Petitioners, and any other  
2 interested parties, may submit briefs or comments within 30 days  
3 thereafter. After receipt and review of the materials this Court  
4 will finalize the training program, and associated rules, and the  
5 Petitioners in these cases shall receive a new hearing before a Board  
6 that does not operate with the unfettered discretion and caprice  
7 demonstrated by the evidence here presented.

8 ORDER

9 For the above reasons the habeas corpus petition is granted and  
10 it is hereby ordered that Petitioner be provide a new hearing which  
11 shall comply with due process as outlined above. Respondent shall  
12 provide weekly updates to this Court on the progress of its  
13 development of the new rules and regulations outlined above.

14

15

16

17 DATED: Aug 30, 2007.

LINDA R. CONDRON

JUDGE OF THE SUPERIOR COURT



18  
19  
20 cc: Petitioner's Attorney (Jacob Burland)  
21 Attorney General (Denise Yates, Scott Mather)

22

23

24

25

26

27

28

**EXHIBIT B**

Petitioner's Positive Accomplishments (2006-2008)

STATE OF CALIFORNIA  
DC 101 (1/92)

## WORK SUPERVISOR'S REPORT

DEPARTMENT OF CORRECTIONS

## GRADE

- 1. A. DEMONSTRATED SKILL AND KNOWLEDGE
- 1. B. ATTITUDE TOWARD FELLOW INMATES AND WORKERS
- 1. C. ATTITUDE TOWARD SUPERVISORS AND STAFF
- 1. D. INTEREST IN ASSIGNED WORK
- 1. E. EFFORT DISPLAYED IN ASSIGNED WORK

## GRADE

- 2. F. TEAMWORK AND PARTICIPATION
- 2. G. LEARNING ABILITY
- 2. H. USE OF TOOLS AND EQUIPMENT
- 2. I. QUALITY OF WORK
- 2. J. QUANTITY OF WORK

PAY STATUS: FROM: \$

TO: \$

FROM: JOB NO.

TO: JOB NO.

TOTAL # Hours Worked:

TOTAL # Hours Assigned:

INMATE ASSIGNED TO

DATE ASSIGNED

ACTUAL WORK CONSISTS OF

PERIOD COVERED BY REPORT

APRIL/MAY/JUNE 2007

C1DL IDL-1.106

06-13-07

RECOMMENDED FOR:

 REASSIGNMENT RETAIN PAY INCREASE PAY DECREASE

INMATE'S INITIALS

COMMENTS (IF MORE SPACE REQUIRED, USE REVERSE SIDE)

CODE OF SAFE PRACTICES REVIEWED

SUPV'S INITIALS:

INMATE'S INITIALS:

SUPERVISOR

*R. Snyder*

LENGTH OF SUPERVISION

3 MONTHS

WORK DETAIL

IWL YARD - 1/5

ETHNICITY

W

INMATE'S NAME

TITCH

CDC NUMBER

B-89549

INSTITUTION

R.J.D.C.F.

DATE

JULY 2, 2007

CDC 101 (1/92)

## WORK SUPERVISOR'S REPORT

DEPARTMENT OF CORRECTIONS

## GRADES

## GRADE

- 1. A. DEMONSTRATED SKILL AND KNOWLEDGE
- 1. B. ATTITUDE TOWARD FELLOW INMATES AND WORKERS
- 1. C. ATTITUDE TOWARD SUPERVISORS AND STAFF
- 1. D. INTEREST IN ASSIGNED WORK
- 1. E. EFFORT DISPLAYED IN ASSIGNED WORK

## GRADE

- 2. F. TEAMWORK AND PARTICIPATION
- 2. G. LEARNING ABILITY
- 2. H. USE OF TOOLS AND EQUIPMENT
- 2. I. QUALITY OF WORK
- 2. J. QUANTITY OF WORK

PAY STATUS: FROM: \$

TO: \$

FROM: JOB NO.

TO: JOB NO.

TOTAL # Hours Assigned:

TOTAL # Hours Worked:

INMATE ASSIGNED TO

DATE ASSIGNED

ACTUAL WORK CONSISTS OF

PERIOD COVERED BY REPORT

C1DL IDL-1.106

6/13/07

*Clerk for Tool Room / Utility Worker*

JULY/AUG/SEPT 2007

RECOMMENDED FOR:

 REASSIGNMENT RETAIN PAY INCREASE PAY DECREASE

INMATE'S INITIALS

COMMENTS (IF MORE SPACE REQUIRED, USE REVERSE SIDE)

CODE OF SAFE PRACTICES REVIEWED

SUPV'S INITIALS:

INMATE'S INITIALS:

SUPERVISOR

*R. Snyder*

LENGTH OF SUPERVISION

3-MONTHS

WORK DETAIL

IWL BROADWAY YARD

ETHNICITY

W

INMATE'S NAME

TITCH

CDC NUMBER

B-89549

INSTITUTION

R.J.D.C.F.

DATE

OCTOBER 05, 2007

STATE OF CALIFORNIA  
DC 101 (1/92)

## WORK SUPERVISOR'S REPORT

DEPARTMENT OF CORRECTIONS

## GRADES

## GRADE

- 2. A. DEMONSTRATED SKILL AND KNOWLEDGE
- 2. B. ATTITUDE TOWARD FELLOW INMATES AND WORKERS
- 2. C. ATTITUDE TOWARD SUPERVISORS AND STAFF
- 2. D. INTEREST IN ASSIGNED WORK
- 2. E. EFFORT DISPLAYED IN ASSIGNED WORK

## GRADE

- 2. F. TEAMWORK AND PARTICIPATION
- 2. G. LEARNING ABILITY
- 2. H. USE OF TOOLS AND EQUIPMENT
- 2. I. QUALITY OF WORK
- 2. J. QUANTITY OF WORK

PAY STATUS: FROM: \$

TO: \$

FROM: JOB NO.

TO: JOB NO.

TOTAL # Hours Assigned:

TOTAL # Hours Worked:

INMATE ASSIGNED TO

DATE ASSIGNED

ACTUAL WORK CONSISTS OF

PERIOD COVERED BY REPORT

C1DL IDL-1.106

6-13-07

*CLERICAL WORK FOR TOOL ROOM / UTILITY WORKER*

OCT-NOV-DEC 2007

RECOMMENDED FOR:

 REASSIGNMENT RETAIN PAY INCREASE PAY DECREASE

INMATE'S INITIALS

*M. J.*

COMMENTS (IF MORE SPACE REQUIRED, USE REVERSE SIDE)

CODE OF SAFE PRACTICES REVIEWED

SUPV'S INITIALS:

INMATE'S INITIALS:

*M. J.*

SUPERVISOR

*B. Smith*

LENGTH OF SUPERVISION

3-MONTHS

WORK DETAIL

IWL BROADWAY YARD

ETHNICITY

WHI

INMATE'S NAME

TITCH

CDC NUMBER

B-89549

INSTITUTION

RJDCAF

DATE

01-09-08

*10*

STATE OF CALIFORNIA  
CDC 101 (1/92)

## WORK SUPERVISOR'S REPORT

DEPARTMENT OF CORRECTIONS

GRADES  
1 - EXCEPTIONAL  
2 - ABOVE AVERAGE  
3 - SATISFACTORY  
4 - BELOW AVERAGE  
5 - UNSATISFACTORY

GRADE

1. A. DEMONSTRATED SKILL AND KNOWLEDGE  
 2. B. ATTITUDE TOWARD FELLOW INMATES AND WORKERS  
 1. C. ATTITUDE TOWARD SUPERVISORS AND STAFF  
 1. D. INTEREST IN ASSIGNED WORK  
 2. E. EFFORT DISPLAYED IN ASSIGNED WORK

GRADE

1. F. TEAMWORK AND PARTICIPATION  
 1. G. LEARNING ABILITY  
 1. H. USE OF TOOLS AND EQUIPMENT  
 1. I. QUALITY OF WORK  
 2. J. QUANTITY OF WORK

PAY STATUS: FROM: \$

TO: \$

FROM: JOB NO.

TO: JOB NO.

TOTAL # Hours Assigned:

TOTAL # Hours Worked:

INMATE ASSIGNED TO	DATE ASSIGNED	ACTUAL WORK CONSISTS OF	PERIOD COVERED BY REPORT
CINI TDI-1 105	11/06/04	Construction Work	JAN-FEB-MAR 2005

RECOMMENDED FOR:	<input type="checkbox"/> REASSIGNMENT	<input checked="" type="checkbox"/> RETAIN	<input type="checkbox"/> PAY INCREASE	<input type="checkbox"/> PAY DECREASE	INMATE'S INITIALS
------------------	---------------------------------------	--	---------------------------------------	---------------------------------------	-------------------

COMMENTS (IF MORE SPACE REQUIRED, USE REVERSE SIDE)	CODE OF SAFE PRACTICES REVIEWED
flat standing inmate needs no supervision	SUPV'S INITIALS: INMATE'S INITIALS:

SUPERVISOR	LENGTH OF SUPERVISION	WORK DETAIL	ETHNICITY
LIL GREEN/EE	3 MONTHS		WW

INMATE'S NAME	CDC NUMBER	INSTITUTION	DATE
TITCH	B-89549	RJDCF	APRIL 01, 2005

STATE OF CALIFORNIA  
CDC 101 (1/92)

## WORK SUPERVISOR'S REPORT

DEPARTMENT OF CORRECTIONS

GRADES  
1 - EXCEPTIONAL  
2 - ABOVE AVERAGE  
3 - SATISFACTORY  
4 - BELOW AVERAGE  
5 - UNSATISFACTORY

GRADE

2. A. DEMONSTRATED SKILL AND KNOWLEDGE  
 2. B. ATTITUDE TOWARD FELLOW INMATES AND WORKERS  
 2. C. ATTITUDE TOWARD SUPERVISORS AND STAFF  
 2. D. INTEREST IN ASSIGNED WORK  
 2. E. EFFORT DISPLAYED IN ASSIGNED WORK

GRADE

2. F. TEAMWORK AND PARTICIPATION  
 2. G. LEARNING ABILITY  
 2. H. USE OF TOOLS AND EQUIPMENT  
 2. I. QUALITY OF WORK  
 2. J. QUANTITY OF WORK

PAY STATUS: FROM: \$

TO: \$

FROM: JOB NO.

TO: JOB NO.

TOTAL # Hours Assigned:

TOTAL # Hours Worked:

INMATE ASSIGNED TO	DATE ASSIGNED	ACTUAL WORK CONSISTS OF	PERIOD COVERED BY REPORT
S1FO CLK-1.002	11-23-05	Typing / Clerical	JAN-FEB-MAR 2006

RECOMMENDED FOR:	<input type="checkbox"/> REASSIGNMENT	<input checked="" type="checkbox"/> RETAIN	<input type="checkbox"/> PAY INCREASE	<input type="checkbox"/> PAY DECREASE	INMATE'S INITIALS
------------------	---------------------------------------	--	---------------------------------------	---------------------------------------	-------------------

COMMENTS (IF MORE SPACE REQUIRED, USE REVERSE SIDE)	CODE OF SAFE PRACTICES REVIEWED
TITCH IS ON TIME / complies with job expectation	SUPV'S INITIALS: INMATE'S INITIALS: ML

SUPERVISOR	LENGTH OF SUPERVISION	WORK DETAIL	ETHNICITY
M. CAVAZOS	3 MONTHS	Clerical	WHI

INMATE'S NAME	CDC NUMBER	INSTITUTION	DATE
TITCH	B-89549	RJDCF	APRIL 01, 2006

STATE OF CALIFORNIA  
CDC 101 (Rev. 4/82)

## WORK SUPERVISOR'S REPORT

DEPARTMENT OF CORRECTIONS

GRADES  
1=Exceptional  
2=Above Average  
3=Satisfactory  
4=Below Average  
5=Unsatisfactory

GRADE

2. A. Demonstrated Skill and Knowledge  
 1. B. Attitude Toward Fellow Inmates and Workers  
 1. C. Attitude To Supervisors and Staff  
 2. D. Interest in Assigned Work  
 2. E. Effort Displayed in Assigned Work

GRADE

2. F. Teamwork and Participation  
 2. G. Learning Ability  
 2. H. Use of Tools and Equipment  
 2. I. Quality of Work  
 2. J. Quantity of Work

PAY STATUS: From \$

To \$

From Job No.

To Job No.

Total No. Hours Assigned

Total No. Hours Worked

LENGTH OF SUPERVISION  
9 months

SUBJECT ASSIGNED TO	DATE ASSIGNED	ACTUAL WORK CONSISTS OF:	PERIOD COVERED BY REPORT
Program Office	11/23/05	Clerical	APR-MAY-JUNE

RECOMMEND FOR:	<input type="checkbox"/> REASSIGNMENT	<input checked="" type="checkbox"/> RETAIN	<input type="checkbox"/> PAY INCREASE	<input type="checkbox"/> PAY DECREASE	INMATE'S INITIALS
----------------	---------------------------------------	--	---------------------------------------	---------------------------------------	-------------------

COMMENTS (IF MORE SPACE REQUIRED, USE REVERSE SIDE)

Inmate TITCH is a good worker.

SUPERVISOR	NUMBER	WORK DETAIL	ETHNICITY
W. MITCHELL, Correctional Sergeant	B-89549	CLK 1.002	WHITE

INMATE'S NAME	INSTITUTION	DATE
TITCH, M.	RJDCF	7/3/06

NAME and NUMBER TITCH, M. B-89549 F1-04-2270 RJDGF

CDC-128-B Rev. 4/74

Inmate Titch, M., B-89549, is the Second Watch Lieutenant's Clerk for the Facility 1 Program Office. I have supervised him for nearly a year, and during this time he has always done a consistently good job. His duties consist of typing disciplinaries, disciplinary hearings, Investigative Employee Reports, administrative lock-up orders, as well as numerous other forms which are essential to the daily operation of custody on Facility 1. Inmate TITCH has proven himself to be a very reliable, skilled clerk with a good attitude and work ethic and an asset to the program office.

orig.: C-File  
cc: Writer  
Inmate

*W. MITCHELL*  
W. MITCHELL, Correctional Sergeant  
Facility 1 Program Office, 2nd Watch

DATE 10/3/06 (Laudatory Chrono)

GENERAL CHRONO

NAME and NUMBER TITCH, M. B-89549 F1-04-227L RJDGF

CDC-128-B Rev. 4/74

This chrono is to commend Inmate Titch, M., B-89549, for his excellent work performance as a Lieutenant's Clerk in the Facility 1 Program Office. As a Correctional Sergeant and acting Lieutenant on Facility 1, I have known Inmate Titch for approximately one (1) year. During this time, he has been a very reliable, competent, hard worker who has consistently done a great job for the program office. I've also observed that he maintains a very positive attitude. I, as well as many other staff members, are very appreciative of Inmate Titch's work performance as he has been an asset to the Facility 1 Program Office.

orig.: C-File  
cc: CC-I  
Writer  
Inmate

*A. SKOG*  
A.G. SKOG, Correctional Sergeant  
PSU Building, 2nd Watch

DATE 8/10/06 (LAUDATORY CHRONO)

GENERAL CHRONO

(3)

## Memorandum

Date : March 12, 2008

To : To Whom It May Concern

Subject: **LAUDATORY MEMORANDUM FOR I/M TITCH, B-89549, F1-04-227L**

This memorandum is in regards to the employment and skills of Inmate TITCH, B-89549, while assigned to Inmate/Ward Labor (I/WL), at Richard J. Donovan Correctional Facility.

Inmate TITCH was initially hired by I/WL in July of 2000 as a welder/pipe fitter for the Steamline and Heating Hot Water Projects. This position required skills in arc welding (SMAW), which was used in pipe fabrication. Since this time, Inmate TITCH has assisted on several additional construction related projects with I/WL. These include but are not limited to the Fire Alarm Project, the Energy Efficiency Project, the Plaza and Roadway Repavement Project, the Shower Pan Replacement Project, the Remodeling of Psych Services Unit Project, the Mental Health Building Project (Facility 4), the Substance Abuse Treatment Building Project (AMITY/Facility 3), The HHW Manifold Project, the Water Conservation Project, and the Housing Conversion Project on Facility 3.

In commission of these projects, Inmate TITCH has become skilled in the operation of miscellaneous heavy equipment (Skiploader, Bobcat, Pettibone, & Forklift) and acquired his Forklift Operator's License. Inmate TITCH has also attended and completed training in Confined Space Awareness.

It should also be noted that Inmate TITCH is assigned the additional responsibility of being the Toolroom Clerk. This is a position of considerable trust, and is responsible for assisting in the control and inventory of all I/WL tools.

During Inmate TITCH's seven years of employment with I/WL he has proved to be a reliable and quality-conscious worker with an exceptional attention to detail that makes him an integral part of our team. I would like to personally commend Inmate TITCH for his outstanding efforts, hard work, and professionalism.



BRENT YOUNG  
Construction Supervisor I  
IWL/RJDCF

Orig: C-File  
Cc: CC-1  
Inmate  
R3 Files

(4)

# Certificate Of Completion

On behalf of Victory Outreach San Diego it is  
with great pleasure that we present

Mark Titch

with this Certificate Of Completion for the

## CHARACTER CURRICULUM

At Richard J. Donovan Correctional Facility

July 3, 2007-NOVERMBER 15, 2007

Michael Tejeda,  
Michael Tejeda,  
Prison Ministry Minister

Gabriel Felix,  
Gabriel Felix,  
Prison Ministry Minister

Sammy Sanchez,  
Sammy Sanchez,  
Prison Ministry Minister

David Garcia,  
David Garcia,  
Prison Ministry Minister

Jesus Garcia,  
Jesus Garcia,  
Prison Ministry Minister

Roberto "Bobby" Reyes,  
Roberto "Bobby" Reyes,  
Prison Ministry Minister

15

NAME	NUMBER	HOUSING	CDC-128-B (Rev. 4/74)
TITCH, M.	B89549	F1-04-227	

The above named inmate has successfully completed Facility One Chapel's Character Class, from July 5, 2007 Thru October 25, 2007. This Christian instructional course taught the value of integrity, honesty, humility wisdom and living a principled centered life. This inmate has learned how to live a principled centered life and is to be commended for his attendance and participation.

ORIG: C-FILE  
CCI  
INMATE

DR. WILLIAM BROWN  
State Chaplain  
Richard J. Donovan Correctional Facility

DATE: October 28, 2007 LAUDATORY CHRONO GENERAL CHRONO

6

NAME and NUMBER TITCH, M., B-89549, F1-04-227L

CDC-128-B(Rev. 4/74)

Inmate TITCH, M., B-89549, F1-04-227L, is a member of the Richard J. Donovan Correctional Facility, (RJDCF) Alcoholics Anonymous (AA) program. On Tuesday nights on a semi-weekly basis, he participates with group discussions, shows the desire to improve himself by giving testimonies of his past history character defects. Inmate TITCH is very supportive of the testimonies in a kind way. He has attended four meetings out of five meetings offered during the period of January 2008 to March 2008.



J. SARANTOS  
Self-Help Sponsor  
Facility 1

Original: Records

cc: CC 1  
Inmate

DATE March 31, 2008 RJDCF GENERAL CHRONO

---

(7)

NAME and NUMBER TITCH, M., B-89549, F1-04-227L

CDC-128-B(Rev. 4/74)

Inmate TITCH, M., B-89549, F1-04-227L, is a member of the Richard J. Donovan Correctional Facility, (RJDCF) Alcoholics Anonymous (AA) program. On Tuesday nights on a semi-weekly basis, he participates with group discussions, shows the desire to improve himself by giving testimonies of his past history character defects. Inmate TITCH is very supportive of the testimonies in a kind way. He has attended two meetings out of three meetings offered during the period of October 2007 to December 2007.



J. SARANTOS  
Self-Help Sponsor  
Facility 1

Original: Records  
cc: CC 1  
Inmate

DATE December 31, 2007

RJDCF

GENERAL CHRONO

(3)

NAME and NUMBER TITCH, M., B-89549, F1-04-227L

CDC-128-B(Rev. 4/74)

Inmate TITCH, M., B-89549, F1-04-227L, is a member of the Richard J. Donovan Correctional Facility, (RJDCF) Alcoholics Anonymous (AA) program. On Monday/Tuesday nights on a semi-weekly basis, he participates with group discussions, shows the desire to improve himself by giving testimonies of his past history character defects. Inmate TITCH is very supportive of the testimonies in a kind way. He has attended five meetings out of six meetings offered during the period of April 2007 to June 2007.

J. Savant

J. SARANTOS  
Self-Help Sponsor  
Facility 1

Original: Records  
cc: CC 1  
Inma

DATE June 30, 2007 RJDCF GENERAL CHRONO

NAME and NUMBER      TITCH, M., B-89549, F1-04-227L      CDC-128-B(Rev. 4/74)

Inmate TITCH, M., B-89549, F1-04-227L, is a member of the Richard J. Donovan Correctional Facility, (RJDCF) Alcoholics Anonymous (AA) program. On Tuesday nights on a semi-weekly basis, he participates with group discussions, shows the desire to improve himself by giving testimonies of his past history character defects. Inmate TITCH is very supportive of the testimonies in a kind way. He has attended four meetings out of five meetings offered during the period of July 2007 to September 2007.

J. Sarant

J. SARANTOS  
Self-Help Sponsor  
Facility 1

Original: Records  
cc: CC I  
Inmate

DATE September 30, 2007 RJDCAF GENERAL CHRONO

9

NAME and NUMBER TITCH, M., B-89549, F1-04-227L

CDC-128-B(Rev. 4/74)

Inmate TITCH, M., B-89549, F1-04-227L, is a member of the Richard J. Donovan Correctional Facility, (RJDCF) Alcoholics Anonymous (AA) program. On Monday/Tuesday nights on a semi-weekly basis, he participates with group discussions, shows the desire to improve himself by giving testimonies of his past history character defects. Inmate TITCH is very supportive of the testimonies in a kind way. He has attended four meetings out of six meetings offered during the period of July 2006 to September 2006.



J. SARANTOS  
Self-Help Sponsor  
Facility 1

Original: Records

cc: CC 1  
Inmate

DATE September 30, 2006

RJDCF

GENERAL CHRONO

NAME and NUMBER TITCH, M., B-89549, F1-04-227L

CDC-128-B(Rev. 4/74)

Inmate TITCH, M., B-89549, F1-04-227L, is a member of the Richard J. Donovan Correctional Facility, (RJDCF) Alcoholics Anonymous (AA) program. On Monday/Tuesday nights on a semi-weekly basis, he participates with group discussions, shows the desire to improve himself by giving testimonies of his past history character defects. Inmate TITCH is very supportive of the testimonies in a kind way. He has attended two meetings out of three meetings offered during the period of January 2007 to March 2007.



J. SARANTOS  
Self-Help Sponsor  
Facility 1

Original: Records  
cc: CC 1  
Inmate

DATE March 31, 2007

RJDCF

GENERAL CHRONO



NAME and NUMBER TITCH, M., B-89549, F1-04-227L

CDC-128-B(Rev. 4/74)

BOX

Inmate TITCH, M., B-89549, F1-04-227L, is a member of the Richard J. Donovan Correctional Facility, (RJDCF) Alcoholics Anonymous (AA) program. On Wednesday nights on a semi-weekly basis, he participates with group discussions, shows the desire to improve himself by giving testimonies of his past history character defects. Inmate TITCH is very supportive of the testimonies in a kind way. He has attended four meetings out of six meetings offered during the period of January 2006 to March 2006.



J. SARANTOS  
Self-Help Sponsor  
Facility 1

Original: Records  
cc: CC I  
Inmate

DATE

March 31, 2006

RJDCF

GENERAL CHRONO

NAME and NUMBER TITCH, M., B-89549, F1-04-227L

CDC-128-B(Rev. 4/74)

Inmate TITCH, M., B-89549, F1-04-227L, is a member of the Richard J. Donovan Correctional Facility, (RJDCF) Alcoholics Anonymous (AA) program. On Monday/Tuesday nights on a semi-weekly basis, he participates with group discussions, shows the desire to improve himself by giving testimonies of his past history character defects. Inmate TITCH is very supportive of the testimonies in a kind way. He has attended five meetings out of seven meetings offered during the period of April 2006 to June 2006.



J. SARANTOS  
Self-Help Sponsor  
Facility 1

Original: Records  
cc: CC I  
Inmate

DATE

June 30, 2006

RJDCF

GENERAL CHRONO



# CERTIFICATE OF RECOGNITION

## RECREATION VOLUNTEER

*M. Titch*

---

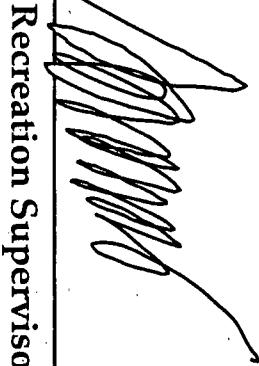
HAS BEEN AWARDED THIS CERTIFICATE FOR

RJDCF 2008 - WALK-A-THON COMPETITION

ORGANIZER / VOLUNTEER

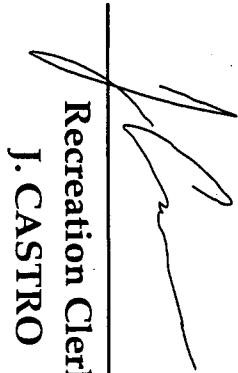
April 19, 2008

---



Recreation Supervisor  
F. CANO

---



Recreation Clerk  
J. CASTRO

NAME and NUMBER      TITCH, M.      B-89549      F1-4-227U      CDC-128-B (4/74)

A special thank you is being given to you for your involvement in the April 19, 2008, Royal Family Kid's Camp Walk-A-Thon. You are commended for your participation to help make the Walk-A-Thon a successful event.

ORIG: C-file  
Writer  
CC-II

  
E. A. CONTRERAS  
Associate Warden  
M.A.C. Sponsor

DATE: MAY 15, 2008

LAUDATORY CHRONO

RJDGF

13

# CERTIFICATE OF RECOGNITION

## WALK-A-THON 2007

*Mark W. Titch*

HAS BEEN AWARDED THIS CERTIFICATE FOR

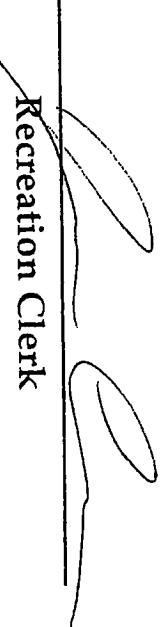
OFFICIATING RJDCAF SPORTS EVENTS

IRUNWALK ORGANIZER

April 28, 2007

  
Recreation Supervisor

F. CANO

  
Recreation Clerk  
J. CASTRO

(2)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**EXHIBIT C**

Petitioner's 2008 Psychological Evaluation

**PSYCHOLOGICAL EVALUATION  
FOR THE BOARD OF PAROLE HEARINGS  
JULY 2008 CALENDAR  
FORENSIC ASSESSMENT DIVISION  
R J DONOVAN CORRECTIONAL FACILITY**

**I. IDENTIFYING INFORMATION****INMATE COPY**

Inmate Name:	TITCH, Mark
CDCR Number:	B89549
DOB(current age):	07/31/1959 (48)
Controlling Offense:	First Degree Murder (2 Counts)
Date of Offense (Age at time):	01/21/1977, 01/29/1977 (age 17)
Sentence:	Seven Years to Life
County of Commitment:	Orange
Date Entered into CDCR:	01/18/1998
Date Received at R J Donovan	09/11/1998
Placement Score:	28
CDCR Forensic Evaluator:	Steven V. Renfeldt, Ph.D.
Data of Evaluation:	04/30/2008

Mr. Mark Titch is a 48-year-old Caucasian male, serving a Seven-year to Life Sentence for two counts of First Degree Murder. He has served 30 years of his confinement time and currently resides at R J Donovan Correctional Facility. This is his ninth appearance before the Board of Parole Hearings.

**II. SOURCES OF INFORMATION**

Mr. Titch's Central File (C-File) and Unit Health Record (UHR) were reviewed. This review also included four prior Board of Parole Hearing psychological evaluations. The most comprehensive evaluation, by Dr John Preston, M.D. dated April 19, 2006 is consistent with both Mr. Titch's self report and information contained in his files.

Mr. Titch was interviewed for the purpose of the current evaluation on April 20, 2008. He was informed that the interview was not confidential and that a report with the results of the evaluation would be submitted to the Board of Parole Hearings (BPH) to assist in determining his suitability for parole. He appeared to understand the nature and purpose of evaluation and the possible consequences of the interview to the best of his ability. Unless otherwise indicated, Mr. Titch agreed to participate in the interview. For reasons not limited to the possibility that an individual may have a mental disability or condition, which may qualify under the Americans with Disabilities Act, the evaluation was conducted by a licensed psychologist. It is the conclusion of the undersigned examiner that it was not necessary to provide auxiliary aids or assistance to achieve effective

communication. This evaluator is not responsible for any inaccurate statements or subsequently changed opinions expressed by the inmate.

Note: If the inmate has any concerns or disagreements about the content of this report, he is free to offer said concerns, either verbally or in writing, at his next board appearance. If the inmate chooses to offer a written rebuttal, it can be attached to the current evaluation for future reference.

### III. QUESTIONS POSED BY THE MOST RECENT BPH

Mr. Titch last appeared before the Board of Parole Hearings (BPH) on July 19, 2006 and was given a two year denial of parole. There were no specific issues or questions requested by the BPH. Recommendations made by the Board were as follows:

1. No More 115's or 128A's
2. Get self help when available
3. Stay discipline free
4. Earn positive chronos

### IV. INTERVIEW INFORMATION

#### BACKGROUND INFORMATION/HISTORY

The reader is referred to the report of Dr. John Preston, M.D., for the detailed and relevant aspects of Mr. Titch's developmental and social history. At today's interview Mr. Titch presented as a 48 year old Caucasian male who was tall, of average build, and appeared his stated age. He was dressed in standard prison attire, and displayed appropriate personal hygiene. His demeanor was responsive and cooperative. His affect was full range, and congruent to cognitive content. Cognitive functions and sensorium were intact, and essentially unremarkable. There were no signs of disturbance in thought, mood, affect, ideation, or perception. Although not formally tested in this evaluation Mr. Titch appeared to be of average level of intelligence.

#### UNDERSTANDING OF LIFE CRIME

According to Police Reports and Probation Officers' Reports (POR), Mr. Titch and his codefendant were involved in a series of burglaries and robberies in Orange County between December 1976 and January 1977. During one of the robberies, a female victim was kidnapped by Mr. Titch and his crime partner, and taken to a remote area. She was executed by gun shots through her mouth in order to prevent her from identifying them. During another robbery approximately one week later, Mr. Titch and his crime partner followed the victim home, and when the male victim went to unlock the front door of his house Mr. Titch's crime partner shot him several times with a .22 caliber rifle. Upon hearing the gun shots, the victim's wife and daughter came to the front door. As the wife and daughter opened the door they were both shot multiple times. The husband and the daughter both died from the gunshot wounds received from Mr. Titch's crime partner. Sometime prior to these murders, Mr. Titch was confronted by a San Diego police

officer after exiting a liquor store he had just robbed. When the officer ordered Mr. Titch to stop, Mr. Titch pulled out his handgun and fired at the officer hitting him 5 times. The officer survived the shooting but was permanently disabled from the injuries received. Mr. Titch was subsequently tried and convicted of 2 counts of murder, 3 counts of burglary, 5 counts of robbery, 1 kidnapping, and assault with a deadly weapon.

Mr. Titch admitted to the events and circumstances surrounding his life term offenses. When asked what he thought contributed to his offenses Mr. Titch stated the following:

“ I was 17 at the time. My family life had a great deal to do with why I was being so stupid. I'm not making excuses for my actions or blaming anyone. The thing I see that ended up causing me to commit murder was that I had a terrible childhood. My mother abandoned me when I was 10, and I had to live with my father who was very overbearing and an alcoholic. We always had conflicts which led to my running away at 12. I had a very hard life on the streets. When I got picked up as a runaway I was always told how bad I was, and asked what was wrong with me to be running away. The process may be very distrustful of adults because no one was really concerned with what was going on at home. This led to a lot of confusion and mistrust on my part because the courts would keep sending me back to the same problems of home.

I eventually met my crime partner at 17 and we started committing crimes together. I had already shot a police officer and thought I killed him, so inside I had the feeling of despair. I took my crime partner to one of my robberies and it turned into a murder. From that point on he kind of took over. In the process of kidnapping the girl, my partner was concerned because he had been photographed by police and needed to prevent her from being a witness. I felt obligated to do what he wanted. I drove to this area and we shot and killed her. When we saw it on the news we panicked and wanted to leave the area. We didn't have money to leave so we had to commit another robbery, which happened to be a dairy. We had been sitting in the driveway talking about changing our minds. The owner came running out to see what we needed, and my partner panicked and shot him. All of our crimes from then on were blunders. The next one was the same way when we robbed the pool hall. At that point I said no more. There was never any plan to kill anyone. As the robberies unfolded it led to murders. I can't believe I was that stupid to go along. I think I felt so hopeless and full of despair because of my life I went along. I didn't have the knowledge or insight to see how sticking with this guy would lead to what it did. I was young, unfocused, and a runaway.”

#### INSIGHT / SELF ASSESSMENT

When asked what has changed since coming to prison and over the past 30 years, Mr. Titch responded as follows:

“I'm not 17 anymore. I'm not dumb, I wasn't educated back then. I've matured and had the good fortune to meet a lot of good people who have taken the time to

sit with me and teach me things about life and skills. My self-esteem has improved. My work ethic has helped in getting up and going to work every day. It caused me to see how unjust it was to go out and rob someone, and deprive them of their property. I think my spiritual development has helped. When I first came in I didn't believe in God because I couldn't see how he could let things happen the way they did. Over the years I've received so many blessings to come do believe in God. I know that without him I would have perished along time ago. I can't emphasize enough how much the good people in my life have really helped me, like teachers, supervisors, inmates, and others. The person I am today is 180 degrees different than I was then. I really didn't know who I was then. I think when I took the steps to analyze who I am I realized I'm not stupid or a bad person. I could make something of myself because I can learn. I think I've made some good choices and progress in my life considering the way I grew up."

When asked what he thought his strengths were Mr. Titch said:

"My greatest strength right now would be my ability to communicate with others. I've always started at the bottom, like in my jobs, and then rose up through the ranks to be a lead man. I have the ability to communicate with people and get them motivated. Another strength is I'm a very good friend to those I know. This is what people tell me anyway. I think I'm a person of worth, I don't lie, and I don't steal. It's tough to be here because other inmates judge you when you try to do good. I like the person I've become. "

When asked what his current weaknesses were Mr. Titch stated the following:

"One of the biggest things for me is to not get too relaxed. I've come a long way to better myself, but I think I need to learn to be a little more humble in the way I display myself to others. Sometimes I should be more patient with people who are not as educated or sophisticated or not as far along the path. There's always a reason why people do what they do, and it's better to understand them if you try to."

When asked why he thinks he is ready for parole Mr. Titch said:

"I think the law says parole should normally be granted unless the magnitude of the offense makes me pose a threat to others. I'm not a threat any longer. The evidence is my behavior and positive pursuits. My education and vocations have helped me prepare to accept the responsibilities of the world. I think I've come to terms with my crimes and past life. I don't hate anyone or harbor any resentment to others. I've acknowledged how bad the things I did were. When I was a kid and had problems with someone I never thought about other people like their parents, or brothers and sisters, or their friends. I can empathize with people now. I know everyone has problems in life and they don't need someone coming along making life harder. I'm very conservative now and never thought I would be. I'm around others who aren't, and it bothers me sometimes to see people not care about

others, or take advantage of others. If we hang around the wrong crowd, go to bars and waste time, we can get into trouble. If I just continue doing the things I'm doing now, going to work, paying bills, being responsible things work out in life."

### CRIMINAL HISTORY

Mr. Titch's criminal history began in adolescence at age 12 and continued until his arrest for the index offense at age 17. He was arrested at age 12 for Truancy and Malicious Mischief. At age 13 he was arrested as a Runaway, for Burglary, and for Escape from Juvenile Placement. At age 14 he was arrested for Assault, Burglary, and Armed Robbery and committed to the California Youth Authority (CYA). He was released from CYA at age 16 and returned again for Vehicle Theft. At age 17 he was arrested for Burglary, Auto Theft and Escape from Juvenile Hall in the months just prior to committing the index offenses.

### SUBSTANCE ABUSE HISTORY

Mr. Titch denied a history of addiction to alcohol or drugs; however he acknowledged experimenting with alcohol and various hallucinogenic drugs starting at age 12. He reported a history using marijuana, alcohol, PCP, and LSD. Mr. Titch denied that alcohol or drugs played any part in his criminal behavior noting that he was sober during all criminal activities. While incarcerated he has attended both narcotics anonymous and alcoholics anonymous. In 1985 he received a CDC-115 for possession of inmate manufactured alcohol.

### INSTITUTIONAL PROGRAMMING

As of this evaluation Mr. Titch's placement score is 28 which is the lowest score possible for an inmate with a life term offense. He has not received a significant negative right up or behavior reproto for over 22 years. He has remained incident free since his last evaluation and Board appearance.

Mr. Titch appears to have used his time in prison to improve himself educationally and vocationally. He obtained his Associates Degree in 1995 and has completed the Vocational Certification in Drafting. He currently works in PIA Printing and has worked there for nine years. Previously he worked for 7 years in IDL Prison Construction as the Tool Room Clerk. During that time he learned welding, concrete finishing, carpentry, and electrical. He also learned to operate heavy equipment, and obtained his forklift operators certificate. He has held other prison jobs in the laundry, on the yard crew, as a Procurement Clerk, a Lieutenant's Clerk, and as a Teacher's Aid in Vocational Auto-body.

Mr. Titch has participated in numerous personal growth programs such as Purpose Driven Living, Biblical Self Confrontation Workshop, Creative Conflict Resolution (Basic and Advanced), KAIROS, the Rapha 12-Step Course, and the 40 Days of Purpose Program. He has long term attendance chronos for both AA and NA. He has also participated in the Walkathon for Child Abuse Treatment the past three years, and participates with Victory Outreach programs.

Mr. Titch reported that when he is not working he spends his time in the dayroom talking with the younger inmates about positive living. He stated that he likes to read positive, non fiction books, and watch PBS on television. He said he regularly attends religious services, and writes letters to friends and family.

### **PAROLE PLANS**

Mr. Titch appears to have realistic and viable parole plans if granted release. He has multiple letters of support in his files.

**Financial vocational plans:** Mr. Titch said that he has a standing job from a friend, Marty Freeman, who owns a marine services business in Chula Vista. He said he also has made numerous contacts with outside contractors while working in the Prison Construction Program.

**Level of support:** Mr. Titch said that he has a friend from El Cajon who has offered assistance with housing when released. He said that he has a back-up offer from a Marty Freeman who owns the marine services business.

**Prior work history:** Mr. Titch has maintained steady employment while incarcerated. He has developed highly marketable skills in both construction trades and printing trades.

**Institutional adjustment:** Mr. Titch appears to have adjusted to prison life and has not received any disciplinary reports for over that past 22 years.

### **MEDICAL AND PSYCHIATRIC HISTORY**

Mr. Titch reported that he feels like he is currently in good physical health and currently is not taking any medication or being treated for any medical condition. He stated that he tested positive for Hepatitis C – Stage I, but is currently asymptomatic. Mr. Titch denied any psychiatric history prior to, or since coming to prison aside from meeting with psychologists for Board evaluations.

## **V. CLINICAL ASSESSMENT**

### **CURRENT MENTAL STATUS/TREATMENT NEEDS**

Mr. Titch presented as a 48 year old Caucasian male of average and stature. He was wearing standard prison attire and displayed appropriate personal hygiene. When asked about being interviewed, he said that he didn't feel well, but would continue as best he could. His demeanor was responsive and cooperative and his affect was full range, and congruent to cognitive content. Cognitive functions and sensorium appeared intact, and essentially unremarkable. He was oriented to time and place and his short memory was adequate. There were no signs of disturbance in thought, mood, affect, ideation, or perception. Although not formally tested in this evaluation Mr. Titch appeared to be of

average level of intelligence. He did not appear to be in need of current mental health treatment.

### DIAGNOSTIC IMPRESSIONS

**Axis I** No Diagnosis

**Axis II** Antisocial Personality Disorder (by history, improved)

**Axis III** Hepatitis C

**Axis IV** Life Term Incarceration

**Axis V** GAF 89

Mr. Titch did not demonstrate any current symptoms of mental illness. His history of early conduct disorder, and an adult history of breaking the law, disregard for others, impulsivity, and aggressiveness, are character traits of an Antisocial Personality Disorder. The fact that he has gone over 20 years without demonstration of these traits supports the qualifiers of "by history and improved."

### PREVIOUS EVALUATION SUMMARIES

Mr. Titch's file contains four prior psychological / psychiatric evaluations since his incarceration. He was first evaluated in April 1978, three months after his arrival at CDCR, by Leisla Howell, Ph.D. Dr. Howell's diagnostic impression of Mr. Titch was that he had an Antisocial Personality that was severe, had paranoid features, and that he had homicidal potential. She opined that Mr. Titch's behavior was driven by hate and hostility resulting from pathological inadequacy and the lack of acceptance from others. Dr. Howell's prognosis was that, "...persons with this type of character disorder do not respond to treatment nor rehabilitative attempts.

Twenty years later, Mr. Titch was evaluated by Dr. L.W. Berning, Ph.D. on February 26, 1998 for his first appearance before the Board of Prison Terms. Dr. Berning provided a diagnostic impression of Antisocial Personality Disorder but concluded his findings with the follow:

"During [Mr. Titch's] period of incarceration some indications of maturity are present and [he] has expressed a desire to find some peace in his life to diminish the negative feelings that he has towards others. To the extent that he obtains insight into his angry feelings, his elevated potential for violence in the community is expected to recede with time."

Mr. Titch was evaluated in April of 2000 by Dr. Alvin Chandler II, Ph.D. Dr. Chandler did not find any symptoms of a mental illness but agreed with the previous evaluators that Mr. Titch has a historical behavior pattern of an Antisocial Personality Disorder. With regards to the offenses, Dr. Chandler noted that Mr. Titch admits to his wrong doings, "...it does not appear that he has dealt with his feelings and the full impact of his

crimes. He seems to intellectualize and emotionally distance himself somewhat from the grievous nature of the crimes and terrible emotional impact that they...have had on others." In spite of this Dr. Chandler assessed Mr. Titch's potential for violence as, "...somewhat less than the average inmate..."

Dr. John Preston, M.D. evaluated Mr. Titch in March of 2006 which was the most recent evaluation in his file. Dr. Preston modified his diagnostic impression of Mr. Titch as "Antisocial Personality Disorder, by hx." Dr. Preston opined that Mr. Titch's risk for violence level as, "...less than average...in the structured setting as compared to other inmates." Dr. Preston provided support for a reduced risk status noting Mr. Titch's prosocial lifestyle in prison, his forming of connections with friends and relatives, and his overall positive programming.

### RISK FOR VIOLENCE

The current research literature indicates that an empirically based approach is the most reliable and valid method for assessing risk of future violence. In the present evaluation the Psychopathy Checklist-Revised (PCL-R), the History-Clinical-Risk-20 (HCR20), and the Level of Service Inventory / Case Management Inventory (LS/CMI) were used to help estimate this individual's risk for future violence in the community. The PCL-R is a standardized ratings scale of psychopathic personality traits that is a reliably associated with risk for future violence. The HCR-20 is a rating for known violent risk factors drawn from research on violence. The LS/CMI is an actuarial instrument designed to evaluate levels of risk to recidivate. This instrument is focused on risk of general recidivism and not violence per se. The data for scoring these instruments was obtained from information derived in both the inmate interview and the files reviewed. These measures have been widely used and are supported by years of research in the risk assessment field. They have been crossed validated with various forensic populations, including United States males in correctional settings.

#### PCL-R

Mr. Titch had an early history of juvenile delinquency, poor behavioral controls, impulsivity, and a parasitic lifestyle. His parole was revoked while committed to the CYA. During the interview he did not present as glib or superficial. He appeared to take responsibility for his offense, showed remorse, and insight to his behaviors. The PCL-R rates an individual for characteristics and traits such as superficial charm, grandiosity, pathological lying, lack of remorse, shallow affect, lack of empathy, poor behavior controls, impulsivity, and criminal versatility. Mr. Titch's total score was Low for psychopathy relative to incarcerated adult male offenders.

#### HCR-20

Focusing more specifically on the "historical" domain of assessing likelihood of future violence, Mr. Titch's records indicate that he had prior violent offenses at a young age, early maladjustment, and he has been previously diagnosed with a personality disorder. He had early adjustment problems in prison and had failed parole as a juvenile.

Within the "clinical" or more current and dynamic domain of risk assessment, Mr. Titch has an absence of risk factors. He appears to have insight into his own behaviors, has a good attitude, has better self control than he has shown in the past, and has responded to personal growth opportunities.

Within the "management of future risk" domain, Mr. Titch's risk level appears low. He has adapted to prison life after an early adjustment period, he has realistic future plans with support from relatives, he manages stress well, and he is responsive to treatment opportunities. Overall, Mr. Titch rated low to moderate for future violence on the HCR-20.

#### LS/CMI

The LS/CSMI addresses factors that contribute to recidivism. Mr. Titch scored very high in the area of criminal history with numerous prior offenses, institutional misconduct, and parole revoked in the past. He has few acquaintances or friends out side of prison due to being incarcerated for two thirds of this life. He also has a history of antisocial behavior. As a result of these factors Mr. Titch scored medium for risk of recidivism on the LS/CMI. .

#### VIOLENCE RISK

The factors that contribute to an elevated risk status for Mr. Titch with regards to violence or future offending are historical. His offenses were impulsive, violent, and resulted in the loss of human life. He came from a family where conflict and emotional abuse were prevalent. He has a long history of criminal behavior beginning at an early age. He spent most of his teenage years as a runaway, in group homes, or incarcerated within the Youth Authority. He has spent all of his adult years incarcerated within the prison system. He had some minor difficulty adapting to prison life and was diagnosed early on with Antisocial Personality Disorder. The objective risk assessment measures rated him as low to moderate for violence and medium for future re-offending.

On the other hand, there are factors that appear to mediate and lesson Mt. Titch's risk status. He appears to have matured and mellowed with age having spent 30 years in prison now. His early behavior problems in prison have stopped, and he has gone the past 22 years without any rule violations or aggressive behavior. He is no longer impulsive, but presents as reflective and thoughtful in the way he interacts with others. He has taken advantage of all opportunities to improve himself in prison including obtaining a college degree, Vocational Certifications, and having responsible and trusted prison jobs with excellent chronos from his supervisors. He has participated in numerous personal growth programs, and appears to have internalized the things he has learned. He shows remorse and insight into his past offenses, and the internal and external factors that contributed to his level of participation. He spends his time trying to make amends by participating in fund raisers for victims and counseling other inmates about making better choices in life. He has viable parole plans, and excellent job skills, that will help him be self-supporting in the community. Mr. Titch, having spent his life incarcerated, has found

a way to grow in a pro social manner while in a negative environment. The prior psychological evaluations have shown slow yet consistent positive progress on Mr. Titch's part. In each case, opinions of his risk status have shown greater confidence in a reduced risk status for both violence and re-offending. In the present evaluation the clinical factors appear to outweigh the historical factors in finding Mr. Titch an overall low risk for psychopathy, low risk for violence, and low to medium risk for future re-offending.

## VI. CONCLUSION

Mr. Titch is a 48 year old man with commitment offenses including two counts of First Degree Murder. He has served 30 years of a Seven Year to Life Sentence. His offenses involved burglaries, robberies, kidnapping and murder, all committed at a young age. Mr. Titch has spent the greater part of his life either incarcerated in the Youth Authority or State Prison. His family history was filled with abuse, neglect, and an impoverished home environment. In spite of these historical factors Mr. Titch has improved himself educationally, vocationally, and spiritually while in prison. He has obtained a college degree, Vocational Drafting Certification, and numerous skills in the both the printing and construction trades. He appears to have grown and matured with age in manner that has reduced his risk status for violence or re-offending compared with his risk when entering prison. He has developed positive associations and contacts outside who have offered support for his parole and parole plans. Although one of the objective measures rate his risk status as medium due to historical factors, his present state, and the clinical factors, appear to outweigh them. The current findings, supported by his prior evaluations, suggest that Mr. Titch's current risk level is low for psychopathy, low for violence, and low to medium for future re-offending.



May 9, 2008

---

Steven V. Renfeldt, Ph.D., CA, License # PSY-11256  
 Forensic Psychologist / Forensic Assessment Division  
 Board of Parole Hearings  
 California Department of Corrections and Rehabilitation

Date Submitted

Reviewed by: \_\_\_\_\_  
 Jasmine A. Tehrani, Ph.D., CA Psychologist License# PSY 18932 Senior Psychologist,  
 Supervisor  
 Board of Parole Hearings  
 California Department of Corrections and Rehabilitation

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**EXHIBIT D**

BPH Parole Consideration Worksheet & Hearing Decision Face Sheet

## LIFE PRISONER PAROLE CONSIDERATION WORKSHEET

<input type="checkbox"/> INITIAL HEARING	<input checked="" type="checkbox"/> SUBSEQUENT HEARING #9
PRISONER'S NAME TITCH, MARK	
DATE OF HEARING 7-07-08	CDC NUMBER B-89549 LOCATION R. J. Donovan Correctional Facility

## LEGAL STATUS

DATE RECEIVED 1-18-78	DATE LIFE TERM STARTS (IF DIFFERENT) 1-18-78	COUNTY ORANGE
OFFENSE MURDER 1 <sup>ST</sup>		CASE NUMBER C 37693
COUNT NUMBER(S) 13	PENAL CODE SECTION(S) VIOLATED PC 187	
TERMS LIFE	MEPD 2-4-84	

## OTHER COMMITMENT OFFENSES OR STAYED COUNTS

STAYED	OFFENSE	CODE SECTION	COUNTY	CASE NUMBER	COUNT NUMBER
<input type="checkbox"/>	ROBBERY	PC 211	ORA	C37693	2, 4, 6, 7, 9
<input type="checkbox"/>	BURGLARY	PC 459	ORA	C37693	10, 11, 15
<input type="checkbox"/>	KIDNAP	PC 209	ORA	C37693	12
<input type="checkbox"/>	MURDER	PC 187	ORA	C37693	16
<input type="checkbox"/>	ADW ON P/O	PC 245 (b)	SD	CR42845	2

## PRESENT AT HEARING

PANEL MEMBER	PANEL MEMBER	PANEL MEMBER
--------------	--------------	--------------

## OTHERS PRESENT

<input type="checkbox"/> PRISONER (IF ABSENT, WHY?)			
<input type="checkbox"/> ATTORNEY:			
<input type="checkbox"/> DEPUTY	LIFER UNIT	COUNTY OF	ORANGE
<input type="checkbox"/> OTHERS:			

## STATEMENT OF FACTS

<input type="checkbox"/> THE HEARING PANEL INCORPORATES BY REFERENCE FROM THE DECISION OF THE HEARING HELD ON _____, PAGES _____ THROUGH _____.
--

## THE STATEMENT OF FACT IS

<input type="checkbox"/> QUOTED FROM THE BOARD REPORT, DATED _____, PAGE(S) _____.
<input type="checkbox"/> QUOTED FROM THE PROBATION OFFICER'S REPORT, PAGE(S) _____.
<input type="checkbox"/> QUOTED FROM THE COURT OPINION, PAGE(S) _____.

BOARD OF PAROLE HEARINGS  
LIFE PRISONER HEARING DECISION FACE SHEET

STATE OF CALIFORNIA

PAROLE GRANTED - (YES)  
CDC: Do not release prisoner before Governor's review.  
 PAROLE DENIED - (NO) 2 YEAR(S)

Records Use OnlyParole Release Date \_\_\_\_\_  
YR MO DAY

Attach Prison Calculation Sheet

INMATE SIGNED STIPULATION OF UNSUITABILITY FOR: YEAR(S)  
 INMATE SIGNED VOLUNTARY WAIVER FOR: YEAR(S)  
 SPLIT DECISION  
 CONTINUE MONTH(S)  
 HEARING POSTPONED REASON:  
MONTH(S)

PANEL RECOMMENDATIONS AND REQUESTS**The Board Recommends:**

No more 115's or 128A's  
 Work to reduce custody level  
 Stay discipline free  
 Earn positive chronos  
 Recommend transfer to \_\_\_\_\_  
 Other \_\_\_\_\_

**As Available**

Get self-help  
 Learn a trade  
 Get therapy  
 Get a GED

**Penal Code 3042 Notices** Sent

Commitment Offense(s)	P211	ROBBERY
	Code(s)	Crime(s)
	P459	BURGLARY 1ST
	Code(s)	Crime(s)
	P187	MURDER 1ST
	Code(s)	Crime(s)
	P209	KID/ROBB/RAN
	Code(s)	Crime(s)

Date Inmate came to CDC	Date Life Term Began	Minimum Eligible Parole Date
January 18, 1978		February 4, 1984

<input type="checkbox"/> Initial Hearing	<input checked="" type="checkbox"/> Subsequent (Hearing #) 09	<input checked="" type="checkbox"/> Date of Last Hearing 07/19/2006
--	---	---

**CDC Representative**Attorney for Prisoner SCOTT J. EADIE Address 5000 BIRCH ST. WEST TOWER SUITE 3000  
NEWPORT BEACH, CA 92660

D.A. Representative County Orange

This form and the Board's decision at the hearing is only proposed and NOT FINAL.  
It will not become final until it is reviewed.

ARCHIE BIGGERS - Commissioner

Date 07/07/2008

2

1

2

3

4

5

6

**EXHIBIT E**

7

Los Angeles Times news Article

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

## LOS ANGELES EDITION

RECEIVED  
JUL 07 2008

Sunday July 6, 2008

latimes.com/california

# State parole board gets a grilling

## California

## Upheaval on the State parole board

A battle pits the governor, who routinely appoints former law enforcement officials to the panel, against the state Senate leader, who says commissioners too often deny parole to de-

Some say it too often denies freedom to deserving inmates, and argue over who should sit on the panel.

By MICHAEL ROTHFIELD  
*Times staff writer*

**SACRAMENTO** — They are trained at putting tough questions to convicted murderers, but the state's powerful parole board commissioners have found themselves on the other

side of the table lately, under interrogation in a political conflict that has cost some of them their jobs.

On one side of the dispute is Gov. Arnold Schwarzenegger, a Republican who routinely appoints former law enforcement officials to the Board of Parole Hearings, which decides whether to release the most se-

rious criminals from prison. On the other is state Senate leader Don Perata, a Democrat from Oakland who believes commissioners deny parole to deserving inmates far too often.

Since January, Democratic

senators led by Perata have re-

jected four of the eight commissioners they have grilled at confirmation hearings, ousting a third of the 12-member board and forcing Schwarzenegger to replace them. Members can serve a year after their appointment but must then receive the Senate's blessing to complete their three-year terms.

The upheaval has further disrupted an already problem-

plagued board that has postponed thousands of parole hearings in recent years, potentially exposing the state to hefty fines from a Superior Court judge.

Perata has called the board

"a sham" for denying parole to 95% of so-called life inmates, many of whom have been locked up for decades. He has urged the governor to appoint commissioners from outside

the law enforcement world to augment the former police officers, sheriffs and probation chief who make up all but one of the current board members.

"It just defies logic to suggest that they can interview or evaluate over 5,000 people [a year] and make only a handful of returns back to the community," Perata said in an interview. "Where are the social

[See Parole, Page B9]

Where are the people who bring a different dimension to life, a different view on rehabilitation?"

But Schwarzenegger has persisted, last week naming

two more commissioners with law enforcement backgrounds. State law says commissioners should have "a broad background in criminal justice."

"We believe that we've been

appointing individuals who will

follow the law and who have the

right background," said Aaron

McLear, the governor's spokes-

man. "We expect these nomi-

nees to weigh each case on its

OVER

①

# Parole board battle pits Peraa against Schwarzenegger

[Parole, from Page B1]

ments, keeping public safety at the forefront of their decision-making process."

The board's new executive director, Martin Hoshino, is trying to reduce a backlog of 1,400 parole hearings postponed, in part, because of outdated psychological reports or unavailable commissioners. Losing members hasn't helped.

"We have hearings ready to go and there's nobody to hear it," Hoshino said. The inability to conduct hearings dates to before Schwarzenegger took office. A Marin County Superior Court judge overseeing an inmate lawsuit is threatening to impose fines for hearings postponed since February; that could cost the state more than \$1 million this year. Keith Wat-

suit said the state is unconcerned about hearings because it doesn't intend to let inmates out anyway.

"Prisoners have no political power," he said.

The board has several functions, including 100,000 proceedings a year conducted by staff and related to parole violations and other matters. But the appointed commissioners, who earn \$112,000 a year in the full-time post, oversee the board's highest-profile duty: hearings for inmates sentenced to life with the possibility of parole.

The commissioners are required to consider a multitude of factors in deciding whether an inmate no longer poses a significant risk and should be released. They are scheduled to conduct 16 hearings a week, often traveling to far-flung

state prisons. When they do

out, the governor usually reverses the decision.

Advocates for prisoners say the commissioners are predisposed to deny parole. Their rulings are "oftentimes based on what they had for breakfast that morning more than how deserving the inmate is," said Matt Gray, a lobbyist on criminal justice issues whose father is a prisoner. "We could have a monkey in a basement stamping these denials."

Los Angeles County Deputy Dist. Atty. David Dahlke said law enforcement officials make good commissioners because they understand the criminal mind and see through inmates' tricks.

"Why isn't the number [of denials] dramatically lower?" Dahlke said. "It's obviously because [senators and criticized by inmates' attorneys, who have

been harshly questioned

by Sen. Alex Padilla (D-Los

Angels) that she couldn't ex-

plain who have committed the most anti-social acts in society."

"Professionally it was one of the worst experiences of my life," said Stan Kubochi, who was tossed off the commission in March, presided over 223 hearings in 2007, with eight result-

ing in grants of parole — an approval rate of 3.6%. Woods acknowledged "a philosophical divide" between Schwarzenegger and Peraa but she said she considered only the people of California.

Peraa disregarded his

work as a public defender, to

stumble into. But she won't

miss searching for state accom-

modations in desolate areas

near prisons on a reimburse-

ment rate of \$84 a day.

"I didn't want to stay in ho-

tel rooms where they were carrying

out dead bodies," she said, "or

had shootouts in the parking

lot."

michael.rothfeld@latimes.com

②